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

FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended December 31, 2011

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: 000-30939

ACTIVE POWER, INC.

(Exact name of registrant as specified in its charter)

Delaware	**74-2961657**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
2128 W. Braker Lane, BK 12, Austin, Texas	**78758**
(Address of principal executive offices)	**(Zip Code)**

(512) 836-6464
(Registrant's telephone number, including area code)
Securities registered pursuant to Section 12(b) of the Act:

Title of Class	Name of Exchange on Which Registered
Common Stock, $0.001 per share	**The Nasdaq Stock Market LLC**

Securities registered pursuant to Section 12(g) of the Act:
(Title of Class)

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

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

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant, based upon the closing sale price of its common stock on the last day of registrant’s most recently completed second fiscal quarter, June 30, 2011, as reported on The Nasdaq Stock Market, was approximately $56.6 million (affiliates being, for these purposes only, directors and executive officers).

As of February 28, 2012, the registrant had 81,090,323 shares of common stock outstanding.

Documents Incorporated by Reference

Certain information required by Part III of Form 10-K is incorporated by reference to the registrant’s proxy statement for the 2012 Annual Meeting of Stockholders, which will be filed with the Securities and Exchange Commission within 120 days after the close of the registrant’s fiscal year ended December 31, 2011.

Active Power, Inc.

Unless otherwise indicated, “we,” “us,” “our,” and “Active Power” mean Active Power, Inc., including our predecessor Texas corporation and our subsidiary companies. References in this report to “$” or “dollars” are to United States of America currency.

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Special Note Regarding Forward-Looking Statements

This report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements about historical or current facts, including, without limitation, statements about our business strategy, plans and objectives of management and our future prospects, are forward-looking statements. Although we believe that the expectations reflected in such forward-looking statements are reasonable, such forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from these expectations. Such risks and uncertainties include, without limitation, the following:

- strategic relationships with third parties, including suppliers and channel partners;
- customer demand for our products;
- customer adoption of new products;
- growth and future operating results;
- developments in our markets;
- expansion of our product offerings and sales channels;
- customer benefits attributable to our products;
- technologies and operations;
- working capital constraints;
- industry trends;
- our recent hiring of a new Chief Executive Officer; and
- future economic, business and regulatory conditions.

You can identify these statements by forward-looking words such as “may,” “will,” “expect,” “intend,” “anticipate,” “believe,” “estimate,” “continue” and other similar words. You should read statements that contain these words carefully because they discuss our future expectations, make projections of our future results of operations or financial condition, or state other “forward-looking” information. We believe that it is important to communicate our future expectations to our investors. However, there may be events in the future that we are not able to accurately predict or control. The factors listed in the section captioned “Risk Factors” in Item 1A of this report, as well as any cautionary language in this report, provide examples of risks, uncertainties and events that may cause our actual results to differ materially from the expectations we described in our forward-looking statements.

PART I.

ITEM 1. Business.

Overview and Strategy

Active Power designs and manufactures continuous power and infrastructure solutions. These solutions ensure continuity for data centers and other mission critical operations in the event of power disturbances.

Our products and solutions are designed to deliver continuous conditioned ("clean") power during power disturbances and outages, voltage sags and surges, and provide ride-through power in the event of utility failure, supporting operations until utility power is restored or a longer term alternative power source, such as a diesel generator is started. We believe our products offer an advantage over those of our competitors in the areas of power density (less space) and energy efficiency, total cost of ownership, system reliability, modular design, and the economically green benefits of our solutions.

We have sold our patented flywheel-based uninterruptible power supply ("UPS") systems since 1999. As of December 31, 2011, we have shipped more than 3,200 flywheels in UPS system installations, delivering more than 800 megawatts of power to customers in 42 countries around the world with more than 110 million runtime hours of operation.

In addition to selling stand alone UPS systems, we also manufacture and sell continuous power systems ("CPS") that integrate our UPS products with other related equipment such as switchgear and backup diesel generators, and that are sold as a complete power solution for customers. Our CPS systems can be sold in a containerized format, or as individual components, and offer the same customer benefits with regard to operating efficiency, reliability and cost as our UPS products.

We have leveraged our success with containerized CPS solutions to work with our partners to develop and manufacture containerized infrastructure solutions. These solutions serve as the infrastructure for containerized data center products, which are self-contained fully-functional data centers.We design and build enclosures that have a fully built out interior – including electrical, cooling, monitoring and other elements – ready for the customer to add their IT racks and servers. These products can be deployed rapidly and at a lower cost than traditional brick-and-mortar solutions and are optimally suited for hyper-scale IT and cloud applications.

In 2011, 42% of our product revenue came from the sale of UPS systems, 36% from the sale of CPS solutions and 22% from the sale of infrastructure solutions.

We are headquartered in Austin, Texas, with international offices in the United Kingdom, Germany, and China.

We believe a number of underlying macroeconomic trends place Active Power in a strong position to be one of the leading providers of critical power protection. These trends include:

- increasing business costs of downtime;
- a rapidly expanding need for data center infrastructure;
- ever-increasing demands placed on the public utility infrastructure;
- an inadequate investment in global utility infrastructure;
- rising costs of energy worldwide driven by volume of energy used; and
- an increasing demand for economically green solutions.

We have evolved significantly since the company was founded in 1992. Our early focus was on research and development of the core products that continue to enable the business today. Over the past several years, we have focused our efforts on brand, markets, and channels of distribution. The technological foundation of Active Power has yielded more than 100 worldwide patents and a highly differentiated, cost-efficient product platform that we have evolved into an expanding suite of infrastructure solutions. As we go forward, it's critical for us to focus on both technology development to maintain and grow our leadership position and build channels of distribution to have more avenues into the market.

Go-to-Market Strategy

Active Power has developed and implemented a go-to-market strategy to set the direction for our sales and marketing initiatives and plans around the following components:

- Customer: Data Center Applications Across Vertical Markets
- Distribution: Partner Enabled Distribution Strategy Transacted Locally
- Geography: 9 Global Markets around 4 Centers of Operation
- Products: Continuous Power and Infrastructure Solutions
- Value: Ingenious Efficient, Reliable, Green Solutions

Customer & Target Markets

According to a 2011 report on the world UPS market by IMS Research, the global UPS market was estimated to be nearly $8 billion in 2011. IMS Research projects the market will increase to more than $9 billion in 2013 and is expected to grow to nearly $10.5 billion by 2015 with a compound annual growth rate of nearly 8%.

UPS products can be classified into single phase and three phase systems. We are engaged in the higher power, three phase market and do not offer any systems in the lower power, single phase range. The market for three phase systems is typically stratified by kVA (kilo-Volt-Amps, or power level) and by geography. We have refined our focus on customers in the 100 kVA and higher category. In 2011, this category of the UPS market was estimated to be $2 billion of the global market and is forecasted to be nearly $3.0 billion of the total market opportunity in 2015 according to the 2011 IMS Research report. This is one of the fastest growing segments of the UPS market according to IMS Research.

Beyond the UPS market, the continuous power solutions market significantly expands our addressable market. These solutions typically contain all of the components of a continuous power system including UPS, generator, switchgear, base fuel tank, and monitoring system. The additional products, integration, and services significantly expand the market opportunity and revenue contribution for us.

The focus of our go-to-market strategy is on customer applications, not individual vertical markets. We deliver products and solutions that support and enable mission critical IT and data center focused applications. These applications can be found in a breadth of vertical markets. The vertical markets where our products and solutions are uniquely suited include data center service provider/collocation, technology, healthcare, financial, government/military, and telecommunications. On a more opportunistic basis, we are focused on delivering power quality solutions to a set of vertical markets including broadcast, airports, and industrial.

We believe it is necessary for a company the size of Active Power that competes in a global UPS market worth more than $2 billion and competing with multi-national corporations to maintain a level of focus that ensures maximum return on sale and therefore shareholder value. Therefore, we have chosen three unique segment strategies focused on data center applications to help maximize our investment, focus, and efforts:

1. Extreme / Hyperscale Segment

   Extreme scale customers typically are companies with a vast global presence directly in the heart of or the basis for the IT industry itself. They operate and manage large homogenous operations of more than 25,000 nodes in single locations across the world. Deployments are typically in the thousands of server nodes, representing several megawatts of UPS power and corresponding power and cooling infrastructure.

2. Enterprise Segment

   Enterprise is one of the largest customer segments within the UPS industry at approximately $1 billion. We further break this down into Regional Colocation Providers and Corporate Data Centers as the customer engagement is noticeably different between the two.

   a. Enterprise: Regional Colocation Providers

      Regional colocation providers have a core business range from hosting to more complex managed services for third party clients. The data center is their core business and key purchasing decisions revolve around speed, efficiency, and reliability. The more IT space available to rent out, the more potential revenue dollars that ultimately drives a better return on investment. They are therefore extremely focused on footprint, energy efficiency, and modularity.

   b. Enterprise: Corporate Data Centers

      Corporate data center customers represent any and all medium to large enterprises operating a data center that services the business needs of the organization, but is not their core business. The data center is there to support the core business and provides business services such as e-mail, storage, web traffic, MRP, CRM, etc.

The following list provides a representative sample of end user customers that utilize our products and solutions to support and enable their operations. The list includes customers to whom such products and solutions have been sold directly byus or via our OEM partners, manufacturing representatives, distributors or strategic IT partners:

Representative Customers	Industry
Barclays PLC	Financial
Bedag Informatik AG	Technology
Bristol Meyers Squibb	Healthcare
Budapest Ferihegy International Airport	Airport
Capgemini	Service Provider / Colocation
Christian Television Network	Broadcast
Hexal	Healthcare
Huawei	Telecommunications
National Oceanic and Atmospheric Association	Government / Military
National Oilwell Varco	Industrial
Oracle	Technology
Orange Slovensko	Telecommunications
Royal Bank of Scotland	Financial
Shandong Utility	Industrial
Suvarnabhumi Airport (Bangkok)	Airport
Terremark Worldwide	Service Provider / Colocation
U.S. Army	Government / Military
WRLN-TV	Broadcast

Distribution: Partner Enabled Distribution Strategy Transacted Locally

We continue to develop client relationships by selling directly and through our network partners. Specifically, we bring products to market through the following distribution methods:

- sales made directly by us;
- manufacturer's representatives;
- distributors;
- OEM partners; and
- strategic IT partners

Sales made directly by us. Our direct sales teams are located in North America, Europe and Asia markets and are supported by four regional offices in the U.S., United Kingdom, Germany, and China. Our direct sales teams are securing and establishing local presence and brand awareness, winning large customer orders, and developing the foundation for the long-term client relationships in their local markets.

Manufacturer's Representatives. We have relationships in place with a group of manufacturer's representatives primarily in North America. A representative has been granted rights to sell Active Power products in a specific geographic territory. In exchange, the representative has agreed to sell a specific volume of our products and not sell any competitive products, all in exchange for compensation at a specified rate that is tied to the profitability of the underlying sales. We also maintain a group of non-exclusive representatives who have each been designated a territory in which to sell our products on a non-exclusive basis for a lower specified commission rate. This channel remains integral to the distribution of our products in North America and increases our geographic sales coverage without the necessity of adding direct sales personnel. Products are marketed and sold under the Active Power brand through this channel.

Distributors. In certain markets, primarily overseas, we have elected to recruit and retain specific distributors to market our products and services into a designated geographic market. The distributor buys products from us and resells them to the end user, often with other products or services. Distributors may also perform service and warranty work for us under contract. This strategy has been successful for us in markets where we choose not to deploy direct sales resources.

OEM Partners. OEM partners are our longest standing method of distribution and remain key to our overall business strategy. Our primary OEM partner and one of our largest customers is Caterpillar, Inc. ("Caterpillar"). Caterpillar markets Active Power's UPS products under the Caterpillar brand name "CAT UPS" and as a complement to its electric power product lines of diesel engines and switchgear. Caterpillar is a global market leader in new generator sales and has the largest installed base of existing standby generators in the world. By offering the CAT UPS with a standby generator and switchgear, Caterpillar can transform a standby power system into a CPS. We believe this total solution gives both Caterpillar and us significant competitive advantages in the power quality market. In 2011, we signed a five-year distribution agreement with Caterpillar to continue this important relationship that dates back to 1999. Our sales to Caterpillar represented 24%, 19%, and 16% of our total revenue for the years ended December 31, 2009, 2010 and 2011, respectively.

Strategic IT Partners. We have entered into a number of agreements since 2007 with leading global organizations in the data center market who have the ability to collaborate with us on new sales opportunities. These relationships help us expand potential opportunities to market our products and services through all of our distribution channels. Our primary IT partner is Hewlett Packard Corporation (HP). HP accounted for 12%, 25% and 36% of our revenue during 2009, 2010 and 2011, respectively.

We are a member of HP's Data Center Solution Builders Program. This program is designed to develop and deliver new technologies and products and services that are targeted towards energy conservation and other operational improvements in data center design or operation. The program allows Active Power to promote its PowerHouse solution jointly with HP on a global basis and to support the power infrastructure requirements of HP's Performance Optimized Data Center (HP POD) products. We have also entered into a Master Services Agreement with HP that allows HP to purchase any of our products, including CleanSource UPS and PowerHouse, for their own use or to resell to their customers. We have also entered into a Master Supply Agreement under which we provide infrastructure solutions to HP. In 2011, Active Power became a member of the HP AllianceONE partner program, enabling closer marketing collaboration between our two companies.

We have agreements with other global IT partners, predominantly in the United States. However, we do not generate significant revenue from these arrangements. We continue to negotiate additional agreements globally with other IT, telecom, and system integrators to increase opportunities for our business.

Additional Channels. In 2012, we will seek to add several other channels in an effort to grow our presence within the enterprise data center segment. These channels include systems integrators, general contractors, and data center property management firms, all of whom have interaction with enterprise clients at various critical stages of the customer buying process.

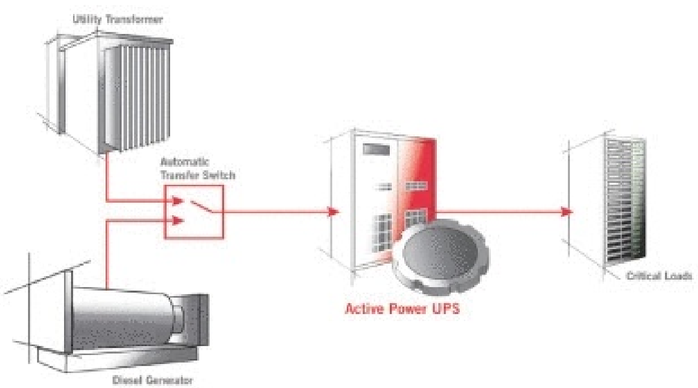
Geography: 9 Global Markets around 4 Centers of Operation

We are focusing our marketing and customer acquisition efforts in nine global regions supported by four regional offices or operations centers. Our operations centers are located in Austin, Texas; Osterode, Germany; Evesham, United Kingdom; and Beijing, China. Our global operations centers provide local sales and service, applications engineering, containerization, integration, and product testing for our continuous power and infrastructure solutions. Sales outside of the U.S. accounted for approximately 31%, 29% and 38% of our revenues in 2009, 2010 and 2011, respectively. We expect that a significant portion of our total revenue will continue to be derived from international sales.

Products: Continuous Power and Infrastructure Solutions

CleanSource UPS

UPS products serve two primary functions. First, during normal operations they are continuously conditioning ("cleaning") the incoming power from the utility and delivering "conditioned" power to the client's mission critical load (e.g., IT equipment). In this mode, the UPS specifically regulates incoming utility power fluctuations in voltage and frequency. Second, if there is any interruption in the utility source, the UPS will provide temporary, or bridging, power until either the utility power is restored, or an alternative generating source, such as a diesel generator, begins to provide power. This role of the UPS in the context of a continuous power application is illustrated below:



Active Power introduced the world's first integrated flywheel uninterruptible power supply (UPS) system, which integrates UPS power electronics with flywheel energy storage technology. The flywheel stores kinetic energy – energy produced by motion – by constantly spinning a compact rotor in a low friction environment. When short-term backup power is required due to utility power fluctuations or losses, the rotor's inertia allows it to continue spinning and the resulting kinetic energy is converted to electricity. The UPS draws upon the stored kinetic energy of the spinning flywheel to generate electricity to the load until the utility power returns, or in the event of a longer interruption, the generator comes online as a power source. The flywheel immediately supports the critical load upon loss of utility power. Within seconds of an extended outage occurring, the UPS signals the generator to start via the automatic transfer switch. The generator then carries the load until utility is restored.

We market our flywheel-based UPS systems under the brand name CleanSource UPS ®. CleanSource UPS is a battery-free UPS system that integrates normal UPS electronics and our flywheel energy storage system into one compact cabinet lineup. We currently offer CleanSource UPS products in power configurations ranging from 130kVA up to 1.5 MVA, with the ability to parallel these products to provide more than eight megawatts of load protection. Combining CleanSource UPS with a generator provides customers with complete short- and long-term protection in the event of a power disturbance. UPS products, branded by Active Power or our original equipment manufacturer ("OEM") partners represented 60%, 48% and 32% of our total revenue for the years ended December 31, 2009, 2010 and 2011, respectively.

Continuous Power Solutions

For customers looking for a complete, integrated continuous power system, we package our CleanSource UPS along with a generator, switch gear, monitoring and controls software, our generator starting module (known as "GenSTART"), an optional cooling system, and a comprehensive maintenance package into a fully integrated system. Due to the space efficiencies of our CleanSource UPS, we are able to offer all of these components in a pre-packaged containerized solution offering we market under the brand name PowerHouse ™.

PowerHouse is packaged in a purpose-built enclosure with size and features depending upon the customer's power load requirements and local and national regulatory requirements. These systems are specifically designed to handle the demands of data center facilities requiring the highest power integrity available while maximizing up time, useable floor space, and operational efficiency. Designed to offer a highly flexible architecture to a customer's constantly changing environment, our systems are offered in eight standard modular power configurations, enabling sizing for power (and cooling) infrastructure on demand. These systems are highly differentiated as they offer flexibility in placement, space savings, fast deployment time after receipt of order, high energy efficiency, and prompt capital deployment to meet current demands. PowerHouse also delivers significant value to customers as the entire system is integrated and tested prior to delivery for a repeatable and simple solution. Our continuous power solutions represented 15%, 20% and 33% of total revenue in 2009, 2010 and 2011, respectively.

Infrastructure Solutions

To better serve our customers and leveraging our expertise in containerization and power distribution and started to manufacture containerized infrastructure solutions, designed to specification for select business partners. These solutions serve as the infrastructure for containerized data center products, which are self-contained fully-functional data centers. Modular data centers may be rapidly deployed with other modular data centers as a cost-effective alternative to traditional raised-floor data centers.

Active Power designs and delivers the exterior shell and a fully outfitted interior – including electrical, cooling, monitoring, and other elements – ready for the customer to add its IT racks and servers. After the customer adds its IT equipment to our containerized infrastructure solution, the customer has a functional data center. Infrastructure solutions represented 18% and 20% of revenue in 2010 and 2011, respectively.

The design and manufacture of infrastructure solutions enables us to leverage our expertise in containerization to build and deliver on infrastructure solutions specifically for our IT partner. It also provides a pull through opportunity for us on our PowerHouse product given approximately one half of our PowerHouse products are sold in support of infrastructure solution products.

GenSTART

GenSTART is a battery-free, starting modular system designed to ensure that a customer's diesel generator will start. Diesel failure is a common cause of UPS system failure when there is a power disturbance. This unique and patented product takes energy from the flywheel of the CleanSource UPS and provides 1725 cold cranking amps to the generator set starting motor, so the customer can be assured starting power is available when it is most critical – at start-up. GenSTART is sold in conjunction with our CleanSource UPS system and is also a critical component in our PowerHouse solution. It can also be sold independently of our UPS product and works with third-party UPS systems.

Service

We deliver worldwide customer support that offers clients assessment, implementation and lifecycle support services for all Active Power products and systems. Building a portfolio of services to work with clients through the lifecycle of their power assessment design and implementation process is a key element of our service growth strategy. We offer the following services to our customers:

- *Infrastructure Needs Assessment*. We work locally through our global network of mission critical infrastructure engineers and project managers to assess the power and cooling needs of a client's facility;

- *Vetting and Validation*. Our teams of experienced application engineers use comprehensive assessments to vet and validate the optimal solution that complements a client's business continuity plan;

- *Alignment with Business Objectives*. Through continuous communication, our teams ensure the solution accurately aligns with the original needs assessment and a client's short-term and projected future business objectives;

- *System Design*. We design client solutions to ensure all components are optimized with a particular focus on reliability, efficiency, and cost effectiveness in determining the correct match and interoperability between components;

- *Deployment*. Our experienced group of project managers will work with a client to develop a timely deployment schedule with the least impact on day-to-day business. We ensure expectations are clearly defined through the deployment phase;

- *Start-Up and Commissioning*. Once the system is deployed, our team takes the system through a rigorous commissioning process to ensure the system is working to specification. Our engineers work closely with the client's team to make certain they are educated and trained on the successful operation of the system; and

- *Service, Support and Monitoring*. Clients can choose from a variety of comprehensive service and support offerings, tiered to match an organization's internal capabilities and requirements. We offer four tiers of maintenance programs specifically designed to deliver on both the long-term preventive maintenance requirements for the system and a client's need for support. Level of support is at the client's discretion. Ensuring a reliable and efficient operation requires accurate monitoring, which we offer as a hands-off remote monitoring service in our center, locally at the client's facility, or as a combination of both.

Service revenues represented 18%, 14% and 17% of our total revenue for the years ended December 31, 2009, 2010 and 2011, respectively.

UPS, Continuous Power and Infrastructure Market Drivers

We believe there are several market dynamics fueling the growth of the UPS, continuous power and infrastructure markets and the need for energy efficient, reliable and green backup power. These include:

Increase in data usage, storage and in data center density:

- Growth of enterprise data, social networking sites, web-based applications, cloud computing and other similar technologies requires data centers to invest in more IT and physical infrastructure equipment to support growth in use and storage rquirements;
- Deployment of additional IT and infrastructure requires more floor space; and
- Enterprises need for more power density to accommodate IT equipment more efficiently within a given space.

More awareness of energy efficiency from both a corporate social responsibility and financial perspective:

- More investment in highly efficient, sustainable technologies to keep electricity costs down, but also to stay competitive in the marketplace;
- Government legislation like the United Kingdom Carbon Reduction Commitment Energy Scheme and other cap and trade programs are becoming more prominent to help eliminate carbon emissions; and
- Electricity costs are the highest single operating costs for many organizations due to substantial amount of power needed to support their data center facilities.

Containerized, modular data centers are becoming more commonplace, not solely for specific niche applications like military and high density computing environments:

- Collocation sites that house containerized datacenters are becoming more prevalent due to performance and tangible economic benefits;
- Short lead times and rapid deployment capability due to use of pre-fabricated building blocks will increase demand for containerized, modular datacenter products, particularly for those organizations that do not have capital readily available to commit to building a brick and mortar facility; and
- Modular design-build approach is a more capital efficient model, enabling organizations to deploy IT and infrastructure as business and IT needs evolve, reducing underutilization.

Customers focused on convenience and improving margins:

- More mission critical organizations are moving towards innovatively designed, turnkey data center and infrastructure solutions that involve less risk, cost, and complexity and more automation; and
- Organizations want the ability to rapidly deploy data center and associated power and cooling infrastructure.

Increase in global energy consumption:

- Rapid industrialization of highly populated world regions is increasing global energy demand and placing a premium on reliability of energy supply and sensitivity to loss of power
- An increasing cost to produce and consume electricity due to rapid depletion of finite fossil fuel sources, instability in oil-producing regions and a preference for green energy sources.

Increasing economic impact of power interruption to users:

- The financial cost of power interruption through loss of products, manufacturing down time, and computer processing interruptions; and
- Reputational cost of power interruption to businesses.

Competitive Landscape

We compete in three primary product areas: UPS systems, CPS, and containerized infrastructure solutions.

UPS Systems. CleanSource UPS competes primarily against conventional battery-based UPS systems from vendors such as Emerson/Liebert, Eaton/Powerware, and APC/MGE. We also compete against rotary UPS systems from vendors such as Piller, Eurodiesel, and Hitec. For applications requiring less than one megawatt of critical load, we largely compete against battery-based competitors and for applications greater than one megawatt we tend to compete against rotary (battery-free) systems vendors. There is greater market acceptance of battery-free solutions (such as flywheel and rotary) compared to battery-based solutions in the one-megawatt and higher power range, making this an ideal segment for our CleanSource UPS products. Several of the leading conventional UPS battery vendors have begun offering flywheel-based energy storage to replace batteries. Vycon is the principal manufacturer of these flywheel systems.

Our primary basis of competition in UPS systems is product differentiation and our advantage in power density (less space),power efficiencies, reliability, and total cost of ownership.

Continuous Power Solutions. CPS are a growing sector of our business that enables us to leverage the strengths and key benefits of our core product, CleanSource UPS. PowerHouse is the brand name for our prepackaged CPS which are delivered in purpose-built enclosures for fast deployment to support a variety of applications including facility expansion, temporary critical power needs, event support, disaster recovery, or to support a containerized data center product. We also offer complete CPS solutions designed for use in traditional data center environments.

There are a variety of competitors with similar capabilities including system integrators and value added service providers who may procure required system components and assemble custom solutions. We believe that we are one of only a few UPS manufacturers in the world also offering pre-packaged standard solutions for quick delivery globally. The power density advantages we enjoy with our UPS products allow us to offer higher continuous power levels within the physical constraints of the containerized space compared to our competitors, which we believe is a barrier to entry for them and will lead to higher revenues from turnkey systems for us in the future. Our product's ability to operate in temperatures of up to 40 degrees Centigrade in non air - conditioned environments (such as a shell building or open-air facility) also acts as a competitive barrier to entry for battery UPS systems which must have sufficient air conditioning to operate properly. In early 2009, we entered into an agreement to jointly market and sell PowerHouse and related services in conjunction with HP. We will support the modular or containerized data center products of each of HP. We believe our ability to jointly market and leverage the activities of our mutual sales channels increases the revenue potential of PowerHouse for Active Power in future periods.

Infrastructure Solutions. Infrastructure solutions refers to the components of a containerized data center. In 2010, we began designing and manufacturing containerized infrastructure solutions for select business partners on a contract basis. We designs to specification and manufactures the modular shell and outfits the interior infrastructure (electrical, cooling, monitoring, etc.). Our clients will then add the IT servers and racks, resulting in a self-contained modular data center that our partners sell to end users.

As with PowerHouse, there are a variety of competitors around the globe with similar capabilities to manufacture these systems. We believe our experience with the power and cooling requirements of the infrastructure provides us with a competitive advantage in the design and manufacturing of these products. Further, the joint offering of our PowerHouse with the containerized infrastructure solutions provides efficiencies, scale, and advantages in sales, marketing, and engineering we expect customers to find increasingly compelling.

Value: Energy Efficient, Reliable, Green Solutions

"Global Innovators Turn to Active Power for Ingenious Infrastructure Solutions"

Active Power realizes our vision statement above through the execution of our go-to-market strategy, a commitment to maintaining and building a sustainable competitive advantage, and the delivery of a compelling value proposition to the marketplace.

Our sustainable competitive advantage is built around the following core areas:

- Intellectual Property

- Core Technology
- Solutions Capability
- Engineering Talent
- Agile Team
- Collaboration with Clients
- Market Approach - The Ingenious Way We Beat the Competition

We believe our key areas of differentiation across all product lines align very well with market drivers and customer demand. The core differentiators for all our solutions are the following:

intelligently EFFICIENT™

- Engineered to deliver industry leading energy efficiency performance reducing losses therefore using less energy; and
- Power delivered in about half the space of competitive systems.

inherently RELIABLE™

- Unique patented design delivers predictable consistent and continuous operation; and
- Proven to be less likely to fail versus conventional systems.

economically GREEN™

- Higher energy efficiency reduces operating expenses, carbon footprint and impact on the environment; and
- Delivers significant total cost of ownership savings to our customers in the near term.

Intellectual Property and Assets

We rely upon a combination of patents, trademarks, confidentiality agreements and other contractual restrictions with employees and third parties to establish and protect our proprietary rights. We have filed dozens of applications before the U.S. Patent and Trademark Office, of which 51 have been issued as patents, of which 39 of those patents are currently active. Additionally, we are attempting to strengthen our patent protection abroad for our technology by continuing to file patent applications and receive patents in Europe and Asia. These efforts have resulted in 76 foreign patents being issued, of which 34 are active. Our patent strategy is critical for preserving our rights in and to the intellectual property embedded in our CleanSource UPS and PowerHouse product lines and in newer technologies. As a manufactured, tangible device that is sold, rather than licensed, our products do not qualify for copyright or trade secret protection. To enforce ownership of such technology, we principally rely on the protection obtained through the patents we own and unfair competition laws. We intend to aggressively protect our patents, which would include bringing legal actions if we deem it advisable.

We own the registered trademarks ACTIVE POWER, CLEANSOURCE and COOLAIR in the United States and abroad. All other trademarks, service marks or trade names referred to in this report are the property of their respective owners.

Research and Development

We believe research and development efforts are essential to our ability to successfully deliver innovative products that address the current and emerging customer, particularly as the power management/infrastructure market evolves. Our research and development team works closely with our marketing and sales teams, IT channel partners, and OEMs to define product requirements that address specific market needs. Our research and development expenses were $4.2 million, $3.4 million and $4.7 million in 2009, 2010 and 2011, respectively. We anticipate our research and development expenditures in 2012 will increase compared to 2011 as we finalize development of our next-generation UPS products and as we broaden our product portfolio, but will decrease as a percentage of sales in the future as our revenues grow. As of December 31, 2011, our research, development and engineering teams consisted of 22 engineers and technicians.

Manufacturing

We manufacture all of our UPS products at our headquarters in Austin, Texas. We are an ISO 9001:2008 quality certified operation which attests to the quality in product and process used to manufacture and deliver products and services to our clients. We source the majority of our components from contract manufacturers to enhance our ability to scale our operations and minimize cost. This approach allows us to respond quickly to customer orders while maintaining high quality standards and optimizing inventory.

Our internal manufacturing process consists of the fabrication of certain critical components within the flywheel energy storage system and the assembly, functional testing, and quality control of our finished products. We also test components, parts and subassemblies obtained from suppliers for quality control purposes.

We have entered into long-term agreements with some of our key suppliers, but we currently purchase most of our components on a purchase order basis. Although we use standard parts and components for our products where possible, we currently purchase the flywheel rotor from a single source. However, we have now successfully qualified an alternate supplier for rotors. Lead times for ordering materials and components vary significantly and depend on factors such as specific supplier requirements, contract terms, production time required, and current market demand for such components or commodities.

The growth in our revenue stream has enabled a higher level of utilization of our manufacturing facility. In addition, the expansion of our product lines has allowed us to increase production capabilities and gain more extended use of our existing factory. We believe our current workforce, facilities, and inventory levels will be sufficient to handle our near-term projected sales demand. Over time, we will need to hire additional manufacturing personnel to address sales volume increases.

Local Assembly

A key component of our strategy is to perform local integration, assembly, and testing of our continuous power and infrastructure solutions. Our first facility of this type is located in Evesham, United Kingdom. We have been integrating and testing our PowerHouse systems locally in the UK for the last two years. We recently added in-house and supplier capabilities to support the final electrical and mechanical assembly for our containerized products. We are working towards ISO certification for this facility. We also perform local integration and testing for our PowerHouse solutions in both Beijing, China, and Osterode, Germany, in conjunction with local partner relationships.

Employees

As of December 31, 2011, we had 226 total employees in the following areas:

- 22 in research and development;
- 109 in manufacturing, sourcing and service;
- 72 in sales and marketing; and
- 23 in administration, information technology and finance.

None of our employees are represented by a labor union. We have not experienced any work stoppages and consider our relations with our employees to be good.

Seasonality

Our business has experienced seasonal customer buying patterns for a number of years. In recent years, both the UPS and power infrastructure market overall have experienced relatively weaker demand in the first calendar quarter of the year and a sequential decrease in revenue from the fourth quarter. We believe this pattern, which we attribute to annual capital budgeting procedures will continue. We also anticipate demand for our products in Europe and Africa may decline in the summer months as compared to other regions because of reduced corporate buying patterns during the vacation season.

Where You Can Find Other Information

Active Power is a Delaware corporation originally founded in 1992 as a Texas corporation. We file annual, quarterly, current and other reports, proxy statements and other information with the Securities and Exchange Commission (“SEC”) pursuant to the Securities Exchange Act of 1934, as amended, or the Exchange Act. You may read and copy any materials the company files with the SEC at the SEC’s Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the SEC’s Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site that contains reports, proxy and other information statements, and other information regarding issuers, including Active Power, that file electronically with the SEC. The address of that site is www.sec.gov.

We maintain a website at www.activepower.com. We make available free of charge through this site our Annual Report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. This information can be found in the Investor Relations section of our website. The website and the information contained therein or connected thereto are not intended to be incorporated in this Annual Report on Form 10-K.

ITEM 1A. Risk Factors

You should carefully consider the risks described below before making a decision to invest in our common stock or in evaluating Active Power and our business. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not currently known to us, or that we currently view as immaterial, may also impair our business operations. The actual occurrence of any of the following risks could materially harm our business, financial condition and results of operations. In that case, the trading price of our common stock could decline. This report is qualified in its entirety by these risk factors.

This Form 10-K also contains forward-looking statements that involve risks and uncertainties. Our results could materially differ from those anticipated these forward-looking statements as a result of certain factors, including the risks described below and elsewhere. See "Special Note Regarding Forward-Looking Statements."

We have a history of significant operating losses.

We have incurred operating losses since our inception in 1992. Although we have achieved operating profitability on a quarterly basis, we have not yet sustained this and achieved annual operating profitability. As of December 31, 2011, we had an accumulated deficit of $260.9 million. To date, we have funded our operations principally through the public and private sales of our stock, from our credit facility, from product and service revenue and from development funding. We will need to generate significant additional revenue while maintaining our current margins in order to achieve annual profitability, and we cannot assure you that we will ever realize such revenue levels or achieve profitability on a consistent basis.

Our increased emphasis on larger and more complex system solutions and customer concentration may affect our ability to accurately predict the timing of revenues and to meet short-term expectations of operating results.

Our increased emphasis on larger and more complex system solutions has increased the effort and time required by us to complete sales to customers. Further, a larger portion of our quarterly revenue is derived from relatively few large transactions with relatively few customers. For example, in 2011, our three largest customers contributed 55% of our revenue. Any delay in completing these large sales transactions or reduction in the number of customers or large transactions, may result in significant fluctuations in our quarterly revenue. Further, we use anticipated revenues to establish our operating budgets and a large portion of our expenses, particularly rent and salaries are fixed in the short term. As a result, any shortfall or delay in revenue could result in increased losses and would likely cause our operating results to be below public expectations. The occurrence of any of these events would likely materially adversely affect our results of operations and likely cause the market price of our common stock to decline.

Our business may be affected by general economic conditions and uncertainty that may cause customers to defer or cancel sales commitments previously made to us.

Continuing economic difficulties in the Unites States and certain international markets have led to an economic recession and lower capital spending and credit availability in some or all of the markets in which we operate. A recession or even the risk of a potential recession or uneven economic growth conditions may be sufficient reason for customers to delay, defer or cancel purchase decisions, including decisions previously made. This risk is magnified for capital goods purchases such as the UPS products and CPS solutions that we supply. Although we believe that our competitive advantage and our efforts to broaden the number of different markets in which we sell will help mitigate the economic risk associated with any one country or market vertical, any customer delays or cancellation in sales orders could materially adversely affect our level of revenues and operating results. Should our financial results not meet the expectations of public market analysts or investors, the market price of our stock would most likely decline.

Our financial results may vary significantly from quarter to quarter.

Our product revenue, operating expenses and quarterly operating results have varied in the past and may fluctuate significantly from quarter to quarter in the future due to a variety of factors, many of which are outside of our control. As a result you should not rely on our operating results during any particular quarter as an indication of our future performance in any quarterly period or fiscal year. These factors include, among others:

- timing of orders from our customers and the possibility that customers may change their order requirements with little or no notice to us;
- rate of adoption of our flywheel-based energy storage system as an alternative to lead-acid batteries and our continuous power and infrastructure solutions;

- ongoing need for short-term power outage protection in traditional UPS systems;
- deferral of customer orders in anticipation of new products from us or other providers of power quality systems;
- limited visibility into customer spending plans;
- timing of deferred revenue components associated with large orders;
- ability to manage capital requirements associated with large orders;
- timing and execution of new product introductions;
- new product releases, licensing or pricing decisions by our competitors;
- commodity and raw material component prices;
- lack of order backlog;
- ability to adjust our cost structure in response to reductions in income;
- loss of a significant customer or distributor;
- impact of changes to our product distribution strategy and pricing policies;
- failure to achieve our anticipated revenue growth rate;
- impact of changes to the product distribution strategy and pricing policies of our distributors;
- changes in product mix;
- changes in the mix of domestic and international sales;
- rate of growth of the markets for our products; and
- other risks described below.

The market for power quality products is evolving and it is difficult to predict its potential size or future growth rate. Most of the organizations that may purchase our products have invested substantial resources in their existing power systems and, as a result, have been reluctant or slow to adopt a new technological approach, particularly during a period of reduced capital expenditures. Moreover, our current products are alternatives to existing UPS and battery-based systems and may never be accepted by our customers or may be made obsolete by other advances in power quality technologies.

Significant portions of our expenses are not variable in the short term and cannot be quickly reduced to respond to decreases in revenue. Therefore, if our revenue is below our expectations, our operating results are likely to be adversely and disproportionately affected. In addition, we may change our prices, modify our distribution strategy and policies, accelerate our investment in research and development, sales or marketing efforts in response to competitive pressures or to pursue new market opportunities. Any one of these activities may further limit our ability to adjust spending in response to revenue fluctuations. We use forecasted revenue to establish our expense budget. Because most of our expenses are fixed in the short term or incurred in advance of anticipated revenue, any shortfall in revenue may result in significant losses.

A significant increase in sales of our PowerHouse product and infrastructure solutions may materially increase the amount of liquidity required to fund the Company's operations.

Because of the significant up-front investment required, and a longer period between order and delivery relative to our UPS products a significant increase in sales of our PowerHouse product and infrastructure solutions may materially increase the amount of liquidity required to fund our operations. The amount of time between the receipt of payment from our customers and our expenditures for raw materials, manufacturing and shipment of products (the cash cycle) for sales of our standard UPS product can be as short as 45 days, and is typically 60 days. However, this cash cycle on a PowerHouse or infrastructure solution sale can be as much as 210 days, depending on customer payment terms. We intend to mitigate the financial impact of this longer cash cycle by requiring customer deposits and periodic payments where possible from our customers. This is not always commercially feasible, and in order to increase our PowerHouse or infrastructure solution sales, we may be required to make larger investments in inventory and receivables to fund these sales opportunities. During 2010 we obtained a bank line of credit with borrowing capabilities tailored to help us finance growth of our PowerHouse or infrastructure solutions business. However, if we experience a substantial increase in the size or number of PowerHouse or infrastructure solutions orders, we may need to obtain additional sources of working capital, debt or equity financing in order to fund this business. If we are unsuccessful at obtaining additional sources of working capital, we may be required to curtail our level of PowerHouse and infrastructure solutions sales or we may lose potential customers, both of which may cause our financial results not to meet the expectations of public market analysts or investors and adversely impact our results of operations.

We derive a substantial portion of our revenues from international markets and plan to continue to expand such efforts, which subjects us to additional business risks including increased logistical and financial complexity, managing internal controls and processes, political instability and currency fluctuations.

The percentage of our product revenue derived from customers located outside of the United States was 31%, 29% and 38% in 2009, 2010 and 2011, respectively. Our international operations are subject to a number of risks, including:

- foreign laws and business practices that favor local competition;
- dependence on local channel partners;
- compliance with multiple, conflicting and changing government laws and regulations;
- longer cash cycles;
- difficulties in managing and staffing foreign operations;
- foreign currency exchange rate fluctuations and the associated effects on product demand and timing of payment;
- political and economic stability, particularly in the Middle East and North Africa;
- greater difficulty in the contracting and shipping process and in accounts receivable collection including longer collection periods;
- ability to fund working capital requirements;
- greater difficulty in hiring qualified technical sales and application engineers; and
- difficulties with financial reporting in foreign countries.

To date, the majority of our sales to international customers and purchases of components from international suppliers have been denominated in U.S. dollars, Euros and British Pounds. All of our UPS systems are manufactured in the United States and then sold to our foreign subsidiaries and customers, normally in U.S. dollars. We have generally benefited from the decline in value of the U.S. dollar relative to foreign currencies over the last several years, which has made our UPS systems more price competitive in foreign markets. However, the value of the dollar will likely fluctuate, and an increase in the value of the U.S. dollar relative to foreign currencies could make our UPS systems more expensive for our international customers to purchase, thus rendering our products less competitive. We also source the non-UPS components for our CPS products locally where possible and pay for these components in local currencies as a way to mitigate the impact of fluctuations in foreign currencies and lessen the impact of any unfavorable fluctuations with the U.S. dollar. Because the UPS system is a small part of the total cost of a CPS solution, this strategy will minimize the effect of currency fluctuations on the pricing of our CPS solutions. As our business expands internationally, many of our subsidiaries are selling products outside of their country of incorporation, and often in foreign currencies. To the extent that we record sales in other than our local currency, this can result in translation gains and losses. Currently, we do not engage in hedging activities for our international operations to offset this currency risk. However, we may engage in hedging activities in the future.

We are subject to risks relating to product concentration and lack of revenue diversification.

We derive a substantial portion of our revenue from a limited number of products, particularly our 250-900 kVA UPS product family. These UPS products are also an integral component part of many of our newer products such as PowerHouse and our infrastructure solutions. We expect these products to continue to account for a large percentage of our revenues in the near term. Continued market acceptance of these products is therefore critical to our future success. Our future success will also depend in part on our ability to reduce our dependence on these few products by developing and introducing new products and product or feature enhancements in a timely manner. Specifically, our ability to capture significant market share depends on our ability to develop and market extensions to our existing product lines at higher and lower power range offerings and as containerized solutions. We are currently investing significant amounts to finalize development of our next-generation UPS product and to broaden our product portfolio. Even if we are able to develop and commercially introduce new products and enhancements, they may not achieve market acceptance and the revenue generated from these new products and enhancements may not offset the costs, which would substantially impair our revenue, profitability and overall financial prospects. Successful product development and market acceptance of our existing and future products depend on a number of factors, including:

- changing requirements of customers;
- accurate prediction of market and technical requirements;
- timely completion and introduction of new designs;
- quality, price and performance of our products;
- availability, quality, price and performance of competing products and technologies;
- our customer service and support capabilities and responsiveness;
- successful development of our relationships with existing and potential customers; and
- changes in technology, industry standards or end-user preferences.

We must expand our distribution channels and manage our existing and new product distribution relationships to continue to grow our business.

The future growth of our business will depend in part on our ability to expand our existing relationships with distributors, to identify and develop additional channels for the distribution and sale of our products and to manage these relationships. As part of our growth strategy, we may expand our relationships with distributors and develop relationships with new distributors. We will also look to identify and develop new relationships with additional parties that could serve as outlets for our products, or that could provide additional opportunities for our existing sales channels, such as the relationships that we have developed with IT hardware manufacturers such as HP. Our inability to execute this strategy successfully and to integrate and manage our existing OEM channel partners and our new distributors and manufacturer's representatives could impede our future growth.

The transition to a new Chief Executive Officer may limit our ability to effectively execute on our business plan.

Effective March 1, 2012, Douglas Milner will become our President and Chief Executive Officer. Because he is new to Active Power, his experience with our management team and knowledge of our operations is limited. While Jan Lindelow, who has been serving as our Interim Chief Executive Officer, will assist Mr. Milner as he transitions into the position, this leadership change may result in disruptions to our business or operations or otherwise limit the ability of our management team to effectively execute on our business plan, which could have an adverse effect on our results of operations and financial condition.

We must continue to hire and retain skilled personnel.

We believe our future success will depend in large part upon our ability to attract, motivate and retain highly skilled managerial, engineering and sales and product marketing personnel. There is a limited supply of skilled employees in the power quality marketplace particularly. Our small size relative to our competitors and lack of brand equity, particularly in foreign markets, makes it very difficult for us to attract personnel in foreign markets. Our failure to attract and retain the highly trained technical personnel who are essential to our product development, marketing, sales, service and support teams may limit the rate at which we can develop new products or generate revenue, particularly in foreign markets. If we are unable to attract the new personnel we desire, retain the personnel we currently employ, or if we are unable to replace departing employees quickly, our operations and new product development may suffer.

We are significantly dependent on our relationships with Hewlett Packard and Caterpillar. If these relationships are unsuccessful, for whatever reason, our business and financial prospects would likely suffer.

Caterpillar including its dealer network is our primary OEM customer and our largest single customer for our flywheel-based products. Caterpillar and its dealer network accounted for 24%, 19% and 16% of our revenue in 2009, 2010 and 2011, respectively. HP is our largest IT channel partner and accounted for 12%, 25% and 36% of our revenue in 2009, 2010 and 2011, respectively. A number of factors could cause these customers to cancel or defer orders, including interruptions to their operations due to a downturn in their industries, delays or changes in their product offerings or securing other sources for the products that we manufacture, or developing such products internally. If our relationships with HP or with Caterpillar are not successful or suffers a material adverse change, such as a material reduction in the level of orders or their failure to timely pay us, our business and operating results would likely suffer.

We have underutilized manufacturing capacity and have no experience manufacturing our products in large quantities.

In 2001, we leased and equipped a 127,000 square foot facility used for manufacturing and testing of our three-phase product line, including our DC and UPS products. To be financially successful, and to utilize fully the capacity of this facility and allocate its associated overhead, we must achieve significantly higher sales volumes. We must accomplish this while also preserving the quality levels we achieved when manufacturing these products in more limited quantities. To date, we have not been successful at increasing our sales volume to a level that fully utilizes the capacity of the facility and we may never increase our sales volume to necessary levels. During 2007, we subleased approximately 31,000 feet of our manufacturing facility to help lower our operating costs and to take advantage of surplus space that we leased but were not using. If we do not reach these necessary sales volume levels, or if we cannot sell our products at our suggested prices, our ability to reach profitability on an annual basis will be materially limited.

Achieving the necessary production levels to absorb the capacity of our manufacturing facility efficiently presents a number of technological and engineering challenges for us. We have not previously manufactured our products in high volume. We do not know whether or when we will be able to develop efficient, low-cost manufacturing capability and processes that will enable us to meet the quality, price, engineering, design and product standards or production volumes required to manufacture large quantities of our products successfully. Even if we are successful in developing our manufacturing capability and processes, we do not know whether we will do so in time to meet our product commercialization schedule or to satisfy the requirements of our customers.

We must build quality products to ensure acceptance of our products.

The market perception of our products and related acceptance of the products is highly dependent upon the quality and reliability of the products that we build. Any quality problems attributable to the CleanSource DC, CleanSource UPS, PowerHouse or containerized infrastructure solution product lines may substantially impair our revenue and operating results. Moreover, quality problems for our product lines could cause us to delay or cease shipments of products or have to recall or field upgrade products, thus adversely affecting our ability to meet revenue or cost targets. In addition, while we seek to limit our liability as a result of product failure or defects through warranty and other limitations, if one of our products fails, a customer could suffer a significant loss and seek to hold us responsible for that loss.

We currently operate without a substantial backlog.

We generally operate our business, without sufficient backlog of orders from our customers. Normally our products are shipped and revenue is recognized shortly after the order is received, usually within two quarters of the date of the order. Because historically our backlog has not always been sufficient to provide all of the next quarter's revenue, revenue in any quarter is often dependent on orders booked and shipped throughout that quarter. We are attempting to increase the size of our backlog to allow greater efficiency in production and to facilitate business planning and to improve revenue visibility. During periods of economic uncertainty, the rate of customer orders can quickly decrease, limiting our ability to build a substantial backlog. Therefore, there can be no guarantee that we can successfully build and maintain a meaningful level of backlog.

Seasonality may contribute to fluctuations in our quarterly operating results.

Our business has experienced seasonal customer buying patterns. In recent years, the UPS industry and our business have generally experienced relatively weaker demand in the first calendar quarter of the year, including a sequential decrease in revenue compared to the fourth quarter. We believe this pattern, which we attribute to annual capital budgeting procedures, will continue. In addition, we anticipate that demand for our products in Europe and Africa may decline in the summer months, as compared to other regions, because of reduced corporate buying patterns during the vacation season.

We depend on sole and limited source suppliers, and outsource selected component manufacturing.

We purchase several component parts from sole source and limited source suppliers. As a result of our current production volumes, we lack significant leverage with these and other suppliers especially when compared to some of our larger competitors. If our suppliers receive excess demand for their products, we may receive a low priority for order fulfillment as large volume customers may receive priority that may result in delays in our acquiring components. If we are delayed in acquiring components for our products, the manufacture and shipment of our products could be delayed. We are, however, continuing to enter into long-term agreements with our sole suppliers and other key suppliers, when available, using a rolling sales volume forecast to stabilize component availability. Lead times for ordering materials and components vary significantly and depend on factors such as specific supplier requirements, contract terms, the extensive production time required and current market demand for such components. Some of these delays may be substantial. As a result, we purchase several critical, long lead time or single sourced components in large quantities to protect our ability to deliver finished products. If we overestimate our component requirements, we may have excess inventory, which will increase our costs. If we underestimate our component requirements, we will have inadequate inventory, which will delay our manufacturing and render us unable to deliver products to customers on scheduled delivery dates. If we are unable to obtain a component from a supplier or if the price of a component has increased substantially, we may be required to manufacture the component internally, which will also result in delays, or be required to absorb price increases. Manufacturing delays could negatively impact our ability to sell our products and could damage our customer relationships.

To assure the availability of our products to our customers, we outsource the manufacturing of selected components prior to the receipt of purchase orders from customers based on their forecasts of their product needs and internal product sales revenue forecasts. However, these forecasts do not represent binding purchase commitments from our customers. We do not recognize revenue for such products until we receive an order from the customer and the product is shipped to the customer. As a result, we incur inventory and manufacturing costs in advance of anticipated revenue. As demand for our products may not materialize, this product delivery method subjects us to increased risks of high inventory carrying costs, obsolescence and excess, and may increase our operating costs. In addition, we may from time to time make design changes to our products, which could lead to obsolescence of inventory.

Our manufacturing operations are concentrated in a small number of nearby facilities.

Our manufacturing, research and development and administrative activities are concentrated in a small number of nearby facilities, and all of our UPS systems are manufactured in our Austin, Texas facility. If, for any reason, including as a result of a natural disaster, act of terrorism or other similar event, any of these facilities should be damaged or destroyed or become inoperable or inaccessible, our ability to conduct our business could be adversely affected or interrupted entirely.

We face significant competition from other companies.

The markets for power quality and power reliability are intensely competitive. There are many companies engaged in all areas of traditional and alternative UPS and backup systems in the United States and abroad, including, among others, major electric and specialized electronics firms, as well as universities, research institutions and foreign government-sponsored companies. There are many companies that are developing flywheel-based energy storage systems and flywheel-based power quality systems. We may face future competition from companies that are developing other types of emerging power technologies, such as high-speed composite flywheels, ultra capacitors and superconducting magnetic energy storage.

Many of our current and potential competitors have longer operating histories, significantly greater financial, technical, service, marketing and other resources, broader name and brand recognition and a larger installed base of customers. As a result, these competitors may have greater credibility with our existing and potential customers and greater service infrastructure than we do. They also may be able to adopt more aggressive pricing policies and devote greater resources to the development, promotion and sale of their products than we can to ours, which would allow them to respond more quickly than us to new or emerging technologies or changes in customer requirements. In addition, some of our current and potential competitors have established supplier or joint development relationships with our current or potential customers. These competitors may be able to leverage their existing relationships to discourage these customers from purchasing products from us or to persuade them to replace our products with their products. Increased competition could decrease our prices, reduce our sales, lower our margins, or decrease our market share. These and other competitive pressures could prevent us from competing successfully against current or future competitors and could materially harm our business.

We may be unable to protect our intellectual property and proprietary rights.

Our success depends to a significant degree upon our ability to protect our proprietary technology, and we expect that future technological advancements made by us will be critical to sustain market acceptance of our products. We rely on a combination of patent, copyright, trademark and trade secret laws and restrictions on disclosure to protect our intellectual property rights. We also enter into confidentiality or license agreements with our employees, consultants and business partners and control access to and distribution of our software, documentation and other proprietary information. Despite these efforts, unauthorized parties may attempt to copy or otherwise obtain and use our products or technology. Monitoring unauthorized use of our products is difficult, and we cannot be certain that the steps we have taken will prevent unauthorized use of our technology, particularly in foreign countries where applicable laws may not protect our proprietary rights as fully as in the United States. In addition, the measures we undertake may not be sufficient to protect our proprietary technology adequately and may not preclude competitors from independently developing products with functionality or features similar to those of our products.

We may be subject to claims by others that we infringe on their proprietary technology.

In recent years, there has been significant litigation in the United States involving patents, trademarks and other intellectual property rights. We may become involved in litigation in the future to protect our intellectual property or defend allegations of infringement asserted by others. Legal proceedings could subject us to significant liability for damages or invalidate our intellectual property rights. Any litigation, regardless of its merits or its outcome, would likely be time consuming and expensive to resolve and would divert management’s time and attention. Any potential intellectual property litigation also could force us to take specific actions, including:

- cease selling our products that use the challenged intellectual property;
- obtain from the owner of the infringed intellectual property right a license to sell or use the relevant technology or trademark, which license may not be available on reasonable terms, or at all;
- redesign those products that use infringing intellectual property; or
- cease to use an infringing trademark.

Our involvement in any such litigation will cause us to incur unexpected litigation costs, require modifications to or limit our ability to sell our products, and adversely impact our business and reputation.

We have anti-takeover provisions that could discourage, delay or prevent our acquisition.

Provisions of our certificate of incorporation and bylaws could have the effect of discouraging, delaying or preventing a merger or acquisition that a stockholder may consider favorable. We also are subject to the anti-takeover laws of the State of Delaware, which may further discourage, delay or prevent someone from acquiring or merging with us. In addition, our agreement with Caterpillar for the distribution of CleanSource UPS provides that Caterpillar may terminate the agreement in the event we are acquired or undergo a change in control. The possible loss of our most significant customer could be a significant deterrent to possible acquirers and may substantially limit the number of possible acquirers. All of these factors may decrease the likelihood that we would be acquired, which may depress the market price of our common stock.

The trading price of our common stock has been volatile and is likely to be volatile in the future.

Historically, the market price of our common stock has fluctuated significantly. In 2011, the sales price of our common stock ranged from $.59 to $3.03. In addition to those risks described earlier in this section, the market price of our common stock can be expected to fluctuate significantly in response to numerous other factors, many of which are beyond our control, including the following:

- actual or anticipated fluctuations in our operating results;
- changes in financial estimates by securities analysts or our failure to perform in line with such estimates;
- changes in market valuations of other technology companies, particularly those that sell products used in power quality systems;
- announcements by us or our competitors of significant sales, technical innovations, acquisitions, strategic partnerships, joint ventures or capital commitments;
- introduction of technologies or product enhancements that reduce the need for flywheel energy storage systems and CPS;
- the loss of one or more key OEM customers or channel partners;
- inability to expand our distribution channels successfully;
- departures of key personnel; and
- changing external capital market conditions.

If the market for technology stocks or the stock market in general experiences loss of investor confidence, the trading price of our common stock could decline for reasons unrelated to our business, operating results or financial condition. The trading price of our common stock might also decline in reaction to events that affect other companies in our industry or the stock market generally even if these events do not directly affect us. Each of these factors, among others, could cause our stock price to decline. Some companies that have had volatile market prices for their securities have had securities class actions filed against them. If a suit were filed against us, regardless of its merits or outcome, it could result in substantial costs and divert management’s attention and resources.

Securities or industry analysts may not publish research or may publish inaccurate or unfavorable research about our business.

The trading market for our common stock will continue to depend in part on the research and reports that securities or industry analysts publish about us or our business. If we do not continue to maintain adequate research coverage or if one or more of the analysts who covers us downgrades our stock or publishes inaccurate or unfavorable research about our business, our stock price would likely decline. Although we were able to secure three additional analysts to provide research coverage on our company during 2011, there can be no guarantee that these research analysts will continue to provide coverage of our company. If one or more of these analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

Our common stock could be delisted from the NASDAQ Global Market if our stock price continues to trade below $1.00 per share.

On December 19, 2011, we received a Staff Deficiency Letter from The Nasdaq Global Market LLC, or Nasdaq, notifying us that we were not in compliance with Nasdaq's Marketplace Rule 5450(a) (1), or the Rule, because the closing bid price for our common stock had, for the preceding 30 consecutive business days, closed below the minimum $1.00 per share requirement for continued listing. In accordance with Marketplace Rule 5810(c) (3) (A) we were provided a period of 180 calendar days, or until June 18, 2012, to regain compliance. If at any time before June 18, 2012, the bid price of our common stock closes at or above $1.00 per share for a minimum of 10 consecutive business days, Nasdaq will provide written confirmation that we have achieved compliance with the Rule. If compliance with the Rule cannot be demonstrated by June 18, 2012, our common stock will be subject to delisting from The Nasdaq Global Market.

In the event that we receive notice that our common stock is being delisted from The Nasdaq Global Market, Nasdaq rules permit us to appeal any delisting determination by the Nasdaq staff to a Nasdaq Hearings Panel. Alternatively, Nasdaq may permit us to transfer the listing of our common stock to The Nasdaq Capital Market if we satisfy the requirements for initial inclusion set forth in Marketplace Rule 5505(a), except for the bid price requirement. Currently, we believe we satisfy these requirements. If our application for transfer is approved, we would have an additional 180 calendar days to comply with the Rule in order to remain on The Nasdaq Capital Market.

We will continue to monitor the bid price for our common stock and consider various options available to us if our common stock does not trade at a level that is likely to regain compliance.

Delisting from The Nasdaq Global Market could have an adverse effect on our business and on the trading of our common stock. If a delisting of our common stock from The Nasdaq Stock Market were to occur, our common stock would trade on the OTC Bulletin Board or on the "pink sheets" maintained by the National Quotation Bureau, Inc. Such alternatives are generally considered to be less efficient markets, and our stock price, as well as the liquidity of our common stock, may be adversely impacted as a result.

Our internal control over financial reporting may not prevent or detect misstatements because of its inherent limitations.

Pursuant to the Sarbanes-Oxley Act of 2002, we are required to provide a report by management on internal control over financial reporting, including management's assessment of the effectiveness of such control. Internal control over financial reporting may not prevent or detect misstatements because of its inherent limitations, including the possibility of human error, the circumvention or overriding of controls, or fraud. Therefore, even effective internal controls can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements. In addition, projections of any evaluation of effectiveness of internal control over financial reporting to future periods are subject to the risk that the control may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. If we fail to maintain the adequacy of our internal controls, including any failure to implement required new or improved controls, or if we experience difficulties in their implementation, our business and operating results could be harmed, we could fail to meet our reporting obligations, and there could be a material adverse effect on our stock price.

If we need additional capital in the future, it may not be available to us on favorable terms, or at all.

We have historically relied on outside financing and cash flow from operations to fund our operations, capital expenditures and expansion. We may require additional capital from equity or debt financing in the future to fund our operations or respond to competitive pressures or strategic opportunities. We may not be able to secure timely additional financing on favorable terms, or at all. The terms of any additional financing may place limits on our financial and operating flexibility. If we raise additional funds through further issuances of equity, convertible debt securities or other securities convertible into equity, our existing stockholders could suffer significant dilution in their percentage ownership of our company, and any new securities we issue could have rights, preferences and privileges senior to those of holders of our common stock. If we are unable to obtain adequate financing or financing on terms satisfactory to us, if and when we require it, our ability to grow or support our business and to respond to business challenges could be significantly limited. Should additional funding be required, we may need to raise the required funds through borrowings or public or private sales of debt or equity securities. If we raise additional funds through the issuance of debt or equity securities, the percentage ownership of our stockholders could be significantly diluted. If we obtain additional debt financing, a substantial portion of our operating cash flow may be dedicated to the payment of principal and interest on such indebtedness, and the terms of the debt securities issued could impose significant restrictions on our operations. We do not know whether we will be able to secure additional funding, or funding on terms acceptable to us, to continue our operations as planned. If financing is not available, we may be required to reduce, delay or eliminate certain activities or to license or sell to others some of our proprietary technology.

ITEM 1B. Unresolved Staff Comments.

None.

ITEM 2. Properties.

Our corporate headquarters facility is a 127,000 square foot building that we lease in Austin, Texas. We lease this building pursuant to a lease agreement that expires in December 2016. Our manufacturing, administrative, information systems, sales and service groups currently utilize this facility. In July 2011 we leased an additional 26,195 square feet in a facility adjacent to our headquarters facility in order to expand our manufacturing capability for our CPS and infrastructure products pursuant to a lease that expires in July 2014.

Our engineering, marketing and administration facility of approximately 19,600 square feet is also located in Austin, Texas and is leased pursuant to a lease agreement that expires in March 2012

In addition to these properties, we lease facilities totaling 19,652 square feet in the United Kingdom, Germany, China and Japan for sales and service activities.

Our current manufacturing and test facilities located at our corporate headquarters can support a UPS business volume significantly in excess of our current revenues with the addition of direct labor only and no need for additional significant capital investment. We believe our existing facilities are adequate to meet our current needs and plans.

ITEM 3. Legal Proceedings.

We are, from time to time, subject to various legal proceedings, claims and litigation arising in the ordinary course of business. We do not believe we are party to any currently pending legal proceedings the outcome of which may have a material adverse effect on our operations or consolidated financial position. There can be no assurance that existing or future legal proceedings arising in the ordinary course of business or otherwise will not have a material adverse affect on our financial position, results of operations or cash flows.

ITEM 4. Mine Safety Disclosures

Not applicable.

PART II.

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

Our common stock is traded on The Nasdaq Stock Market under the symbol "ACPW." The following table lists the high and low per share sales prices for our common stock as reported by The Nasdaq Stock Market for the periods indicated:

	High	Low
2011		
Fourth Quarter	$ 1.48	$ 0.59
Third Quarter	2.67	1.19
Second Quarter	3.03	2.06
First Quarter	3.01	1.73
2010		
Fourth Quarter	$ 2.71	$ 1.26
Third Quarter	1.51	0.78
Second Quarter	0.89	0.70
First Quarter	1.26	0.75

As of February 28, 2012, there were 81,090,323 shares of our common stock outstanding held by 186 stockholders of record.

We have never declared or paid cash dividends on our capital stock. We currently intend to retain any earnings for use in our business and do not anticipate paying any cash dividends in the foreseeable future. Future dividends, if any, will be determined by our board of directors.

We did not repurchase any of our securities during 2011.

Sale of Unregistered Securities

None.

Stock Performance Graph

The graph depicted below shows a comparison of cumulative total stockholder returns for an investment in our common stock, The Nasdaq Stock Market (US) Composite Index, and a peer group of power technology companies having similar market capitalizations.

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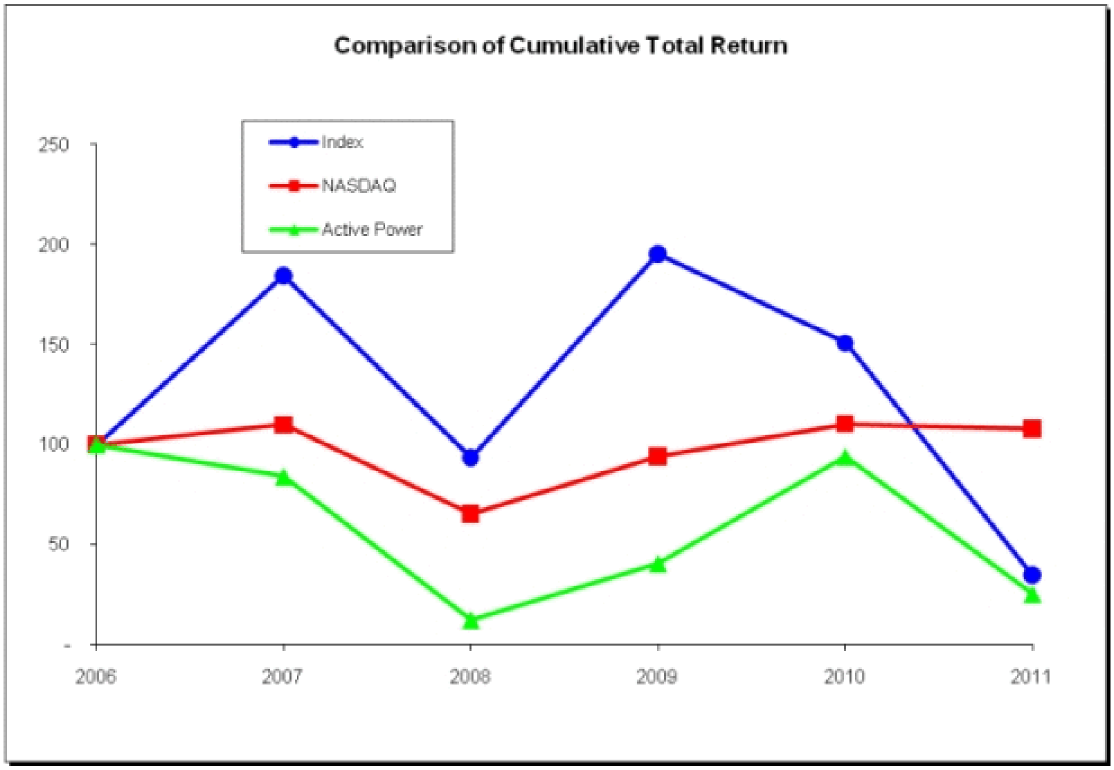
COMPARISON OF CUMULATIVE TOTAL RETURN



(1) The Power Index peer group consists of an equal weighting of the following companies, all traded on The Nasdaq Global Market: Active Power, Inc. (ACPW), American Superconductor Corp. (AMSC), Beacon Power Corp. (BCON), Capstone Turbine, Inc. (CPST), FuelCell Energy, Inc. (FCEL), Plug Power, Inc. (PLUG), and Satcon Technology Corp. (SATC).

(2) The graph covers the period from December 29, 2006, the last trading day before the beginning of our fifth preceding fiscal year, through December 30, 2011, the last trading day of our most recently completed fiscal year.

(3) The graph assumes that $100 was invested in our common stock on December 29, 2006 at the closing price on that date of $2.62 per share, in The Nasdaq Stock Market Composite Index and the peer group Power Index, and that all dividends, if any, were reinvested. No cash dividends have been declared or paid on our common stock.

(4) Stockholder returns over the indicated period should not be considered indicative of future stockholder returns.

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ITEM 6. Selected Consolidated Financial Data.

The following tables include selected consolidated financial data for each of our last five years. The consolidated statement of operations data for the years ended December 31, 2011, 2010 and 2009 and consolidated balance sheet data as at December 31, 2011 and 2010 have been derived from the audited consolidated financial statements appearing elsewhere in this document. The consolidated statement of operations data for the years ended December 31, 2008 and 2007 and the consolidated balance sheet data as at December 31, 2009, 2008 and 2007 have been derived from audited consolidated financial statements not appearing in this document. This data should be read in conjunction with the consolidated financial statements and notes thereto, with "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Item 7 and with the other financial data set forth elsewhere in this report. Our historical results of operations are not necessarily indicative of results of operations to be expected for future periods.

Consolidated Statement of Operations Data	Year Ended December 31,				
In thousands except per share data	2011	2010	2009	2008	2007
Total revenue	$ 75,482	$ 64,955	$ 40,311	$ 42,985	$ 33,601
Total cost of goods sold	57,581	46,935	31,081	34,997	30,375
Gross profit	17,901	18,020	9,230	7,988	3,226
Total operating expenses	24,781	21,824	20,193	22,074	24,579
Operating loss	(6,880)	(3,804)	(10,963)	(14,086)	(21,353)
Net loss	(7,094)	(3,925)	(11,033)	(13,442)	(20,492)
Basic and diluted net loss per share	$ (0.09)	$ (0.05)	$ (0.17)	$ (0.22)	$ (0.38)

Consolidated Balance Sheet Data	Year Ended December 31,				
In thousands	2011	2010	2009	2008	2007
Cash and investments	$ 10,746	$ 15,550	$ 7,489	$ 11,171	$ 22,492
Working capital	13,753	19,082	11,681	16,451	27,526
Total assets	35,027	39,518	29,344	32,671	43,326
Long-term obligations	726	579	468	521	604
Total stockholders' equity	16,292	20,822	14,492	20,821	33,248

ITEM 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion should be read in conjunction with the financial statements appearing elsewhere in this Form 10-K. This report contains forward-looking statements, within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, that involve risks and uncertainties. Our expectations with respect to future results of operations that may be embodied in oral and written forward-looking statements, including any forward looking statements that may be included in this report, are subject to risks and uncertainties that must be considered when evaluating the likelihood of our realization of such expectations. Our actual results could differ materially. The words "believe," "expect," "intend," "plan," "project," "will" and similar phrases as they relate to us are intended to identify such forward-looking statements. In addition, please see the risk factors section above for a discussion of items that may affect our future results.

Executive Level Overview

Active Power is headquartered in Austin, Texas, where we design and manufacture our patented flywheel-based uninterruptible power supply ("UPS") systems and continuous power and infrastructure solutions. These solutions ensure continuity for data centers and other mission critical operations in the event of power disturbances.

Our products and solutions are designed to deliver continuous conditioned ("clean") power during power disturbances and outages, voltage sags and surges, and provide ride-through power in the event of utility failure, supporting operations until utility power is restored or a longer term alternative power source, such as a diesel generator is started. We believe our products offer an advantage over those of our competitors in the areas of power density (less) space and energy efficiency, total cost of ownership, system reliability, modular design, and the economically green benefits of our solutions.

Our patented flywheel-based UPS systems store kinetic energy by constantly spinning a compact steel wheel ("flywheel") driven from utility power in a low friction environment. When the utility power used to spin the flywheel fluctuates or is interrupted, the flywheel's inertia causes it to continue spinning. The resulting kinetic energy of the spinning flywheel generates electricity known as "bridging power" for short periods, until either utility power is restored or a backup electric generator starts and takes over generating longer-term power in the case of an extended electrical outage. We believe our flywheel products provide many competitive advantages over conventional battery-based UPS systems, including substantial space savings, higher power densities, "green" energy storage, and higher power efficiencies up to 98%. This high energy efficiency reduces operating costs and provides customers a lower total cost of ownership. We offer our flywheel products with load capabilities from 130kVA to 8,400kVA. We typically target higher power applications of 200kVA and above, largely because the majority of customers in this market segment have backup generators. Our flywheel-based UPS systems are marketed under the brand name CleanSource®. As of December 31, 2011, we have shipped more than 3,200 flywheels in UPS system installations, delivering more than 800 megawatts of power to customers in 42 countries around the world.

We also sell continuous power systems ("CPS"), which incorporate our UPS products with switchgear and a generator to provide complete short- and long-term protection in the event of a power disturbance. Where the CPS is sold in a containerized package, it is marketed under the brand name PowerHouseTM . PowerHouse can be deployed in either a 20-foot or 40-foot-long ISO container depending upon the customer's power load requirements. These systems are specifically designed to handle the demands of high-tech facilities requiring the highest power integrity available while maximizing up time, useable floor space and operational efficiency. Designed to offer a highly flexible architecture to a customer's constantly changing environment, our PowerHouse systems are offered in four standard modular power configurations, enabling sizing for infrastructure on demand. These systems are highly differentiated as they offer flexibility in placement, space savings, fast deployment time after receipt of order, high energy efficiency, and prompt capital deployment to meet current demands. They also deliver significant value to customers as the entire system is integrated and tested prior to delivery for a repeatable simple solution. We also sell CPS solutions to customers in a non-containerized format, typically deploying such solutions inside buildings.

In close cooperation with strategic partners like Hewlett Packard and leveraging our expertise in containerization and power distribution, in 2010 we began to manufacture containerized infrastructure solutions, designed to specification for select business partners. These solutions serve as the infrastructure for modular data centers, which are self-contained fully-functional data centers. Modular data centers may be rapidly deployed with other modular data centers as a cost-effective alternative to traditional raised-floor data centers. Active Power designs and delivers the exterior shell and a fully outfitted interior – including electrical, cooling, monitoring, and other elements – ready for the customer to add its IT racks and servers. After the customer adds its IT equipment to our containerized infrastructure solution, the customer has a functional data center. Containerized infrastructure solutions represented 18% and 20%, respectively, of 2010 and 2011 total revenue. We expect revenue to grow in coming years from current and future customers as modular data center infrastructure continues to gain acceptance in the market.

In 2011 42% of our product revenue came from the sale of UPS systems, 36% from the sale of CPS solutions and 22% from the sale of infrastructure solutions.

We are headquartered in Austin, Texas, with international offices in the United Kingdom, Germany and China.

Our total revenue in 2011 increased by $10.5 million, or 16%, from 2010, primarily driven by an increase in the global demand for new data center construction and increased market acceptance of our products and solutions. Sales of our CPS systems and containerized infrastructure solution products increased by approximately $15.9million, or 65%, compared to 2010 as a number of global customers made repeated purchases of our CPS products, reflecting growing acceptance of, and validation of the improved performance characteristics of our CPS solutions and containerized infrastructure solution products. However sales of our UPS systems decreased by approximately $6.5 million or 21% compared to 2010 due to lower direct sales in the North American market.

We sell our products to a wide array of commercial and industrial customers across a variety of vertical markets, including data centers, manufacturing, technology, broadcast and communications, financial, utilities, healthcare, government and airports. We have expanded our global sales channels and direct sales force, selling in major geographic regions of the world, but particularly in North America, Europe and Asia. We sell our products through the following distribution methods:

- Sales made directly by Active Power;
- Manufacturer's representatives;
- Distributors;
- OEM partners; and
- Strategic IT partners.

Our revenue derived from North America was $28.7 million, $47.5 million and $48.6 million in 2009, 2010 and 2011, respectively, representing 71%, 73% and 64%, respectively, of our total revenues. Our revenue derived from customers located in Europe was $9.2 million, $13.0 million and $19.1 million in 2009, 2010 and 2011, respectively, representing 23%, 20% and 25%, respectively, of our total revenues. Our revenue derived from customers located in Asia was $2.4 million, $4.4 million and $7.8 million in 2009, 2010 and 2011, respectively, representing 6%, 7% and 11%, respectively, of our total revenues. We achieved revenue growth in all of our primary markets during 2011. Our largest revenue growth occurred in the European and Asian market, where our revenues increased by $6.1 million or 47% and $3.4 million or 76%, respectively, over 2010. Our growth in Europe and Asia in 2011 was primarily derived from increased sales of our containerized solutions. In North America, our total revenue increased by $1.1 million or 2% over 2010. Our strong growth in CPS and infrastructure products in North America was offset by a decrease in UPS revenue with lower sales volume from both our OEM and direct sales channels.

We believe total revenue will grow in 2012 from all of our products and as we continue to focus on selling more complete systems rather than just products. In particular, we expect continuing market acceptance of containerized solutions to drive higher sales of our PowerHouse and containerized infrastructure solution products globally. We also believe that the global growth in data center demand and from cloud-based computing and storage requirements will also lead to higher sales of our UPS products. We are specifically targeting those customers with large IT and power needs who have the ability to make frequent and large UPS purchases as their global operations expand.

Our gross margins still fluctuate on a quarterly basis depending on changes in the product mix of our revenues and were as high as 27% during our first quarter of 2011 and as low as 20% in the fourth quarter. On an annual basis, our gross profit margin decreased to 24% in 2011 from 28% in 2010 and increased from 23% in 2009. The decrease in gross profit margin from 2010 reflects the impact of an increase in the sales of our CPS and infrastructure products as a percentage of our total revenue, the decrease in sales of our UPS systems and lower than expected margins on service revenues associated with our CPS solutions. Our CPS and infrastructure products generally earn lower margins for us than sales of our UPS product because they include a higher proportion of third party ancillary equipment. Absent other factors, an increase in revenue driven by these product categories would result in an overall lower margin for our business. In 2011, the effects of this change in product mix were further exacerbated by a decline in sales volume of our UPS systems. This resulted in higher unabsorbed manufacturing costs due to lower utilization of our manufacturing facility, further negatively impacting our gross margins. Our margins on services associated with CPS installations have been lower than we expected. As we mature and gain more experience in the deployment of these solutions, we have seen an improvement in the margins we generate from this business, and we were able to increase these margins in the last two quarters of 2011.

Our operating losses were $11.0 million, $3.8 million and $6.9 million in 2009, 2010 and 2011, respectively. Our operating losses include non-cash stock based compensation expenses of $1.3 million, $1.1 million and $1.7 million in 2009, 2010 and 2011 respectively. The increase in operating losses was due to the deterioration of our gross margin despite the growth in revenue and from a higher level of operating costs. Our operating costs increased by 14% or $3 million compared to 2010, primarily due to higher headcount costs as we added capabilities and resources as we increased our CPS and infrastructure businesses. We also incurred approximately $1.4 million in costs associated with a change in our Chief Executive Officer and from costs associated with the closure of our sales and support operations in Japan during the fourth quarter of 2011.

The larger sales price of our PowerHouse and containerized infrastructure orders can cause large quarterly fluctuations in our inventory, receivables and payables balances, depending on the number of such orders in progress at any point in time. This can cause material fluctuations in the level of working capital we require. If the number of such orders increases rapidly or any of these orders have payment terms that are less favorable, we will need access to more liquidity to fund the growth of our business and to fulfill these orders. We increased our bank revolving line of credit in 2010 to provide a source of funding for this scenario, to help fund our growth and manage our working capital requirements.

We have a history of annual operating losses and have not yet reached operating profitability on an annual basis. We believe that the success of our flywheel products and our CPS and containerized infrastructure solutions, combined with our focus on direct sales to customers, will help us to further increase our revenues and reduce our level of operating losses and the amount of cash that we consume in our operations. We continue to manage our level of operating costs and have recently taken a number of actions to contain our operating costs; including closing our sales headquarters operations in Japan and realigning our manufacturing and support capabilities in the United Kingdom. We will need to continue to focus on operating costs, management of cash and working capital in 2012 in order to manage the level of funds we use in our operating activities. Our total cash and investments at December 31, 2011 were $10.7 million, compared to $15.6 million at December 31, 2010. We believe that our cash and investments and our sources of available liquidity will be sufficient to fund our operations for at least the next twelve months.

Our sales cycle is such that we generally have visibility two to three quarters in advance for future orders that allows us to predict revenues over this period of time with some degree of confidence. However, a sudden change in business volume or product mix, positive or negative, from any of our business or channel partners or in our direct business can significantly impact our expected revenues and impact our ability to quickly respond to opportunities. The recent global economic downturn has reduced our confidence at predicting future revenues, and even with improving economic conditions, there is still uncertainty and risk in our forecasting. This two to three quarter window of sales visibility does provide us with some opportunity to adjust expenditures or take other measures to reduce our cash consumption if we can see and anticipate a shortfall in revenue or give us time to identify additional sources of funding if we anticipate an increase in our working capital requirements due to increased revenues or changes in our revenue mix. A significant increase in sales, especially in our PowerHouse or our infrastructure solutions business, would likely increase our working capital requirements, due to the longer production time and cash cycle of sales of these products. We established a revolving bank credit facility to help finance a growth in PowerHouse and infrastructure solutions and believe that this will be adequate to sustain further growth in these products.

Should additional funding be required or desirable, we would expect to raise the required funds through borrowings or public or private sales of debt or equity securities. If we raise additional funds through the issuance of debt or equity securities, the ownership of our stockholders could be significantly diluted. If we obtain additional debt financing, a substantial portion of our operating cash flow may be dedicated to the payment of principal and interest on such indebtedness, and the terms of the debt securities issued could impose significant restrictions on our operations. We do not know whether we will be able to secure additional funding, or funding on terms acceptable to us, to continue our operations as planned. If financing is not available, we may be required to reduce, delay or eliminate certain activities or to license or sell to others some of our proprietary technology.

Critical Accounting Policies and Estimates

We consider an accounting policy to be critical if:

- the accounting estimate requires us to make assumptions about matters that are highly uncertain or require the use of judgment at the time we make that estimate; and

- changes in the estimate that are reasonably likely to occur from period to period, or use of different estimates that we could have reasonably used instead in the current period, would have a material impact on our financial condition or results of operations.

Management has reviewed the development and selection of these critical accounting estimates with the Audit Committee of our Board of Directors, and the Audit Committee has reviewed these disclosures. In addition, there are other items within our financial statements that require estimation, but are not deemed critical as defined above. Changes in these and other items could still have a material impact upon our financial statements.

Allowance for doubtful accounts

Trade receivables are recorded at the stated amount, less an allowance for doubtful accounts. The allowance represents estimated uncollectible receivables associated with potential customer defaults on contractual obligations, usually due to the customer's potential insolvency. The allowance includes amounts for certain customers where a risk of default has been specifically identified. In addition, the allowance includes a provision for customer defaults on a general formula basis when it is determined the risk of some default is probable and estimable, but cannot yet be associated with certain customers. The assessment of the likelihood of customer defaults is based on various factors, including the length of time the receivables are past due, risks unique to particular geographic regions, historical experience and existing economic conditions. Historically, a large portion of our sales have been made through OEM channels to a few large customers, and so our credit losses have been minimal. As we integrate additional distribution channels into our business and increase our direct sales to more and smaller customers, the risk of credit loss may increase.

Inventories

Inventories are priced at the lower of cost (using the first-in, first-out method) or market. We estimate inventory reserves on a quarterly basis and record reserves for obsolescence or slow-moving inventory based on assumptions about future demand and marketability of products, the impact of new product introductions, inventory turns and specific identification of items, such as product discontinuance, damaged goods or engineering/material changes.

Warranty liability

The estimated warranty liability costs are accrued for each of our products at the time of sale. Our estimates are principally based on assumptions regarding the lifetime warranty costs of each product, including where little or no claims experience may exist. Due to the uncertainty and potential volatility of these estimates, changes in our assumptions could have a material effect on our reported operating results. Our estimate of warranty liability is reevaluated on a quarterly basis. Experience has shown that initial data for a new product can be very volatile due to factors such as product and component failure rates, material usage and service delivery costs in correcting product failures; therefore our process relies upon long-term historical averages until sufficient data is available. As actual experience becomes available, it is used to modify the historical averages to ensure that the forecast is within the range of likely outcomes. The resulting balances are then compared to current spending rates to ensure that the accruals are adequate to meet expected future obligations.

Revenue recognition

We recognize revenue when four criteria are met: (i) persuasive evidence that an arrangement exists; (ii) delivery has occurred or services have been rendered; (iii) the sales price is fixed or determinable; and (iv) collectability is reasonably assured. Revenue-generating transactions generally fall into one of the following categories of revenue recognition:

- We recognize product revenue at the time of shipment for substantially all products sold directly to customers and through distributors because title and risk of loss pass on delivery to the common carrier. Our customers and distributors do not have the right to return products. If title and risk of loss pass at some other point in time, we recognize such revenue for our customers when the product is delivered to the customer and title and risk of loss has passed.

- We recognize installation and service and maintenance revenue at the time the service is performed.

- We recognize revenue associated with extended maintenance agreements ("EMAs") over the life of the contracts using the straight-line method, which approximates the expected timing in which applicable services are performed. Amounts collected in advance of revenue recognition are recorded as a current or long-term liability based on the time from the balance sheet date to the future date of revenue recognition.

- We recognize revenue on certain rental programs over the life of the rental agreement using the straight-line method. Amounts collected in advance of revenue recognition are recorded as a current or long-term liability based on the time from the balance sheet date to the future date of revenue recognition.

- Shipping costs reimbursed by the customer are included in revenue.

Multiple element arrangements ("MEAs"). Arrangements to sell products to customers frequently include multiple deliverables. Our most significant MEAs include the sale of one or more of our CleanSource UPS or PowerHouse products, combined with one or more of the following products: design services, project management, commissioning and installation services, spare parts or consumables, and EMA's. Delivery of the various products or performance of services within the arrangement may or may not coincide. Certain services related to design and consulting may occur prior to delivery of product and commissioning and installation typically take place within 6 months of product delivery, depending upon customer requirements. EMAs, consumables, and repair, maintenance or consulting services generally are delivered over a period of one to five years. In certain arrangements revenue recognized is limited to the amount invoiced or received that is not contingent on the delivery of future products and services.

When arrangements outside of the scope of software revenue recognition guidance include multiple elements, we allocate revenue to each element based on the relative selling price and recognize revenue when the elements have standalone value and the four criteria for revenue recognition have been met for each element. We establish the selling price of each element based on Vendor Specific Objective Evidence ("VSOE") if available, Third Party Evidence ("TPE") if VSOE is not available, or Best Estimate of Selling Price if neither VSOE nor TPE is available. We generally determine selling price based on amounts charged separately for the delivered and undelivered elements to similar customers in standalone sales of the specific elements. When arrangements include an EMA, we recognize revenue related to the EMA at the stated contractual price on a straight-line basis over the life of the agreement.

Any taxes imposed by governmental authorities on our revenue-producing transactions with customers are shown in our consolidated statement of operations on a net-basis; that is excluded from our reported revenues

Stock-based compensation

We account for stock-based compensation using a fair-value based recognition method. Stock-based compensation cost is estimated at the grant date based on the fair value of the award and is recognized as an expense ratably over the requisite service period of the award. Determining the appropriate fair-value model and calculating the fair value of stock-based awards at the grant date requires considerable judgment, including estimating stock price volatility, expected option life and forfeiture rates. We develop our estimates based on historical data and market information that can change significantly over time. A small change in estimates used can have a relatively large change in the estimated valuation.

We use the Black-Scholes option valuation model to value employee stock awards. We estimate stock price volatility based upon our historical volatility. Estimated option life and forfeiture rate assumptions are derived from historical data. For stock-based compensation awards with graded vesting, we recognize compensation expense using the straight-line amortization method.

Results of Operations

Comparison of 2011 to 2010

Product revenue

Product revenue primarily consists of sales of our CleanSource power quality products, CPS and our data center containerized infrastructure solutions. Our CleanSource power quality products are comprised of both UPS and DC product lines and our CPS solutions are comprised of our UPS systems and some combination of third party ancillary equipment, such as engine generators and switchgear. The CPS products may be sold in a containerized solution that we call PowerHouse, or as separate equipment. Our data center containerized infrastructure solutions provide power distribution, cooling capabilities, security systems, fire suppression and monitoring capabilities for our IT channel partners.

The following table summarizes for the periods indicated, a year-over-year comparison of our product revenue (in thousands):

Year	Annual Amount	Change from Prior Year	Percent Change
2011	$ 62,650	$ 7,003	13%
2010	55,647	$ 22,810	69%
2009	32,837	—	—

Our product revenue represented 83% and 86% of total revenue for 2011 and 2010, respectively. Our product revenue was derived from the following sources (in thousands):

	2011	2010	Change from Prior Year	Percent Change
Product revenue:				
UPS product revenue	$ 26,394	$ 31,072	$ (4,678)	(15)%
Continuous Power Systems	22,222	13,155	9,067	69%
Data center infrastructure solutions	14,034	11,420	2,614	23%
Total product revenue	$ 62,650	$ 55,647	$ 7,003	13%

The growth of our product revenue in 2011 came from the sale of CPS models, including Powerhouse, as our solutions have gained market acceptance. We were able to significantly increase volume for these products through our IT channel partners and also with our direct sales organization, particularly in the European and Asian markets. We have been able to capitalize on an emerging trend of modularized data center solutions, where our CPS systems are able to offer higher power density and lower operating costs to provide a complimentary power and infrastructure solution for IT companies when they sell such modularized products. We introduced the containerized data center infrastructure solutions during 2010 as a way to provide complimentary products for, and to help in sale of our PowerHouse products into the modular data center market. We have also been successful at selling our PowerHouse product directly to military, utility and data center customers during 2011. Our efforts to grow CPS and infrastructure solution sales reflects our strategy of focusing on selling total solutions and not just UPS products to our customers.

Offsetting this increase in sales of our CPS and infrastructure products, we have experienced a decline in sales of our UPS products in 2011. We had an absence of large UPS-only orders in 2011 from hyper-scale IT and collocation customers who had purchased large volumes of UPS products directly from us in 2010, particularly in the North American market that caused a decrease in UPS product revenues. We also saw a decline in sales volume from our OEM partners who historically have been our largest customer of UPS systems. We anticipate improved sales from hyper-scale IT and collocation customers in 2012 which will drive an increase in our UPS revenues.

In 2011 we sold 387 flywheel product units, a slight decrease from the 408 units sold in 2010, reflecting the lower volume of UPS products in 2011. The average selling price per flywheel unit decreased to $80,000 in 2011 compared to approximately $84,000 in 2010, due to the lower volume of wheels sold through our direct sales channel. We typically generate higher prices and profit margins from our direct sales compared to sales made through our OEM channel as we do not have to offer channel discounts on our direct sales.

In 2011, we delivered a total of 93.5 megawatts of critical power systems, which generated approximately $538,000 in revenue per megawatt of critical power delivered. This compares to 100.4 megawatts of critical power systems delivered in 2010, which generated approximately $478,000 in revenue per megawatt. The decrease in megawatts of critical power delivered reflects the lower volume of UPS products delivered. The increase in dollar per megawatt delivered reflects the relatively larger sales transactions of CPS systems in 2011, which generate more revenue per megawatt of critical power delivered, compared to UPS systems only.

Our CPS and infrastructure products tend to be larger in value and from a smaller number of customers compared to sales of our UPS products. This smaller number of customers with greater transaction value can contribute to large quarterly fluctuations in revenue from each product family, due to the timing of orders and shipments in any particular accounting period. Individual CPS sales have been as high as $6 million in 2011, as we have delivered multiple CPS products to single customers and our single largest order for containerized infrastructure products was over $ **7** million in 2011. A small number of transactions can therefore lead to significant revenue, but cause greater volatility in our quarterly results and increase liquidity risk for us as we continue to refine and improve the payment terms of these opportunities as part of our working capital management. We expect revenue to grow in coming years from current and future customers as modular data center infrastructure continues to gain acceptance in the market.

Product sales from our OEM channels, which were primarily from the sale of UPS systems, represented 17% of our total revenue for 2011 compared to 20% in 2010. Sales of our UPS products are a much smaller part of our OEM partner's total business and subject to more volatility in quarterly sales, particularly during difficult economic periods as the OEM partners focus on their core business. In 2011 we have seen fewer number of transactions, but larger value transactions from our OEM channel. Product revenue from our OEM channels decreased by 5% in 2011 relative to 2010, after increasing by 30% in 2010 compared to 2009, reflecting decreased performance from our OEM partner. We have supported our OEM partners' efforts to sell total solutions to their customers that include generators and switchgear that they manufacture along with our UPS systems as a total solution. If our OEM partners are successful with this strategy, we believe that it will help drive an increase in our UPS product revenue. However, as our OEM partners sell more solutions, quarterly revenue becomes more variable. Caterpillar remains one of our largest customers as well as our largest OEM customer.

Product sales from our IT channel partners represented 39% of our product revenues for 2011 compared to 27% of product revenues in 2010. This growth reflects the increased sales of CPS and infrastructure solutions during 2011 by our IT channel partners for their end-customers.

North America sales were 64% of our total revenue for 2011, compared to 73% for 2010. Our North America sales increased by 2% in 2011 compared to 2010, primarily as a result of lower UPS systems revenue and the decrease in sales from our OEM channels, which was offset by the continued growth in sales of our CPS and data center infrastructure solutions.

We also sell products directly to customers in Asia and Europe and we have a network of international distributors in other territories to sell our products. In these markets, customers are more likely to purchase a total power solution such as PowerHouse from us rather than a stand-alone UPS system. This usually results in a longer selling cycle and makes quarterly results from these regions more inconsistent and dependent upon a smaller number of larger value transactions. Thus the amount of revenue from our international markets can fluctuate significantly on a quarterly basis, but continue to increase when evaluated on an annual basis. Our sales in Europe increased by 47% in 2011 to $19.1 million as we continue to expand our sales force and operations, particularly in Germany and the UK where we have had success selling CPS solutions into the data center market. Our sales in Asia increased by 76% in 2011 to $7.8 million, which increase primarily consists of increasing PowerHouse sales in China. China represents the second largest UPS market in the world and has the potential to become a substantial market for our products. Over time we anticipate increasing sales of our UPS systems as well as our CPS solutions in China. We have historically experienced a lag between adding sales and service capabilities and generating meaningful revenue from a new territory. As a result, we would expect that the investments that we have made during the last few years in Europe and Asia will generate higher revenues from these regions in 2012. We continue to invest in sales, service and marketing capabilities in each of these regions as well as building brand awareness for our company and products globally. We expect that a significant portion of our total revenue will continue to be derived from international sales.

Sales of Active Power branded products through our direct and manufacturer's representative channels represented 45% of our product revenue for 2011, compared to 53% for 2010. As direct sales typically have higher profit margins than sales through our OEM and IT channels, we will continue to focus on building our direct sales channel to increase revenue and improve profit margins and to decrease our dependency upon any particular channel partner. We believe sales of our Active Power branded products in markets that were not covered by our OEMs will continue to increase over time and will continue to become a larger percentage of our total revenue.

Our products perform well in harsh environments where power quality or reliability is particularly poor, which makes them a good fit for countries with a poor power infrastructure or in harsh manufacturing or process environments, or situations where reliability is paramount, such as mission-critical business applications, particularly data center applications. Therefore we have traditionally focused our direct sales efforts on these types of customer situations.

Service and other revenue

Service and other revenue primarily relates to revenue generated from both traditional (after-market) service work and from customer-specific system engineering. This includes revenue from design, installation, startup, repairs or reconfigurations of our products and the sale of spare or replacement parts to our OEM and end-user customers. It also includes revenue associated with the costs of travel of our service personnel and revenues or fees received upon contract deferment or cancellation. Revenue from extended maintenance contracts with our customers is also included in this revenue category. The following table summarizes for the periods indicated a year-over-year comparison of our service and other revenue (in thousands):

Year	**Annual Amount**	**Change from Prior Year**	**Percent Change**
2011	$ 12,832	$ 3,524	38%
2010	9,308	1,834	25%
2009	7,474	—	—

Service and other revenue increased by 38% for 2011, compared to 2010. This increase is primarily due to higher levels of service and contract work from direct product sales and from professional fees associated with PowerHouse and other CPS sales. For these customers we provide a full power solution, including site preparation, installation of an entire power solution and provision of all products required to provide a turnkey product to the end user often including maintenance services. We also had increased service revenues from maintenance contracts and repair related activities as our increasing install base of UPS customers provides greater opportunities to generate such revenues. In situations where we make sales through our OEM channel, it is typical for the OEM to provide these types of services to their end-user customers directly, so these revenue sources do not exist on our OEM sales. We anticipate that service and other revenue will continue to grow with product revenue, particularly as our PowerHouse system revenue grows, and as our installed base of UPS product expands, because as more units are sold to customers, more installation, startup and maintenance services will be required.

Cost of product revenue

Cost of product revenue includes the cost of component parts of our products, ancillary equipment that is sourced from external suppliers, personnel, equipment and other costs associated with our assembly and test operations, including costs from having underutilized facilities, depreciation of our manufacturing property and equipment, shipping costs, warranty costs, and the costs of manufacturing support functions such as logistics and quality assurance. The following table summarizes for the periods indicated, a year-over-year comparison of our cost of product revenue (in thousands):

Year	Annual Amount	Change from Prior Year	Percent Change	Gross Margin
2011	$ 47,664	$ 7,619	19%	24%
2010	40,045	14,218	55%	28%
2009	25,827	—	—	21%

The 19% increase in cost of product revenue compares to the 13% increase in product revenues that we experienced in 2011. This disparity reflects the higher relative cost and lower margin on our CPS and infrastructure products that we have historically experienced. Cost of product revenue also included $200,000 and $146,000 of stock-based compensation expense in 2011 and 2010, respectively. The cost of product revenue as a percentage of total product revenue was 76% in 2011, as compared to 72% for 2010. This increase in cost as a percentage of revenue compared to 2010 reflects the impact of sales product mix and the higher levels of unabsorbed overhead costs attributable to a lower level of UPS system production. We continue to operate a manufacturing facility that has a manufacturing and testing capacity significantly greater than our current product revenue levels. We continue to work on reducing our product costs through design enhancements and modifications, and vendor management programs and increasing our sales volume to absorb these expenses.

Our margins on CPS and infrastructure solutions sales are lower compared to the margins realized on our UPS sales because we realize lower margins on the third party equipment that we purchase and include in our CPS and containerized product offerings. We do not yet have a consistent volume of quarterly business from these newer product offerings that would enable us to realize benefits from economies of scale, standardization of design, planning and purchasing, which we believe will lead to higher margins in the future for these products. However, we continue to implement our strategy to improve the profitability of individual transactions and the profitability of the company as a whole. We believe that as our direct sales of CPS and infrastructure solutions and our total revenues continue to increase, our product margins will continue to improve, in part to the scale, efficiency and evolving standardization of these products and from improved revenue management for customization of products for customers. During 2011 we also invested in additional dedicated facilities to support our CPS and infrastructure solutions that will facilitate more efficient manufacturing and allow us to support further growth in this business.

We have also continued to improve the efficiency and utilization of our manufacturing facility, which has a large portion of fixed costs. We incur approximately $6.0 million per year in fixed costs for our manufacturing facility that has a capacity in excess of our current business requirements. We expense the excess costs of the underutilization of this facility as part of our cost of product revenues. We now produce more goods with less overhead than in previous years. Some of this efficiency is driven by higher product volumes that allow for better utilization of our test facility and our manufacturing space. We also have ongoing programs within our engineering and manufacturing departments to lower product costs, to identify alternative and cheaper vendors if possible, without impacting quality levels, to reduce our absolute level of overhead spending and headcount, and to improve the manufacturability of our products. We have also been able to utilize UPS manufacturing personnel in the manufacture of our PowerHouse and infrastructure solution products, which has further improved the efficiency of our manufacturing operations. For 2012, we anticipate further cost reductions from these ongoing programs.

Cost of service and other revenue

Cost of service and other revenue includes the cost of component parts that we use in service or sell as spare parts, as well as labor and overhead costs of our service organization, including travel and related costs incurred in fulfilling our service obligations to our customers and the costs of third party contractors used in completion of some of our professional services. The following table summarizes for the periods indicated a year-over-year comparison of our cost of service and other revenue (in thousands):

Year	Annual Amount	Change from Prior Year	Percent Change	Gross Margin
2011	$ 9,917	$ 3,027	44%	23%
2010	6,890	$ 1,636	31%	26%
2009	5,254	—	—	30%

The cost of service and other revenue increased by 44% in 2011 while our service and other revenues increased by 38%. As a percentage of service and other revenues, our costs were 77% of revenue in 2011, compared to 74% in 2010. This increase in the cost of service and other revenue was primarily due to lower margins realized in Europe for design, installation and project management on a number of large CPS system sales in 2011. Additionally, we continue to expand our service team to broaden the geographic regions where we have service capability as our total business grows. Operationally, we are challenged to manage the growth of our service organization so that it scales with the growth in total revenues so that we can meet customer requirements without growing our service organization cost structure too rapidly. The utilization of our service personnel will also be affected by the number of PowerHouse and infrastructure solution products implemented in a particular period and in periods where we have a low number of installation projects, our costs as a percentage of revenue would be expected to increase. A large portion of the costs involved in operating our service organization are fixed in nature and we incur approximately $300,000 to $600,000 in unabsorbed overhead each quarter. We continue to work on reducing our service overhead through better utilization of our service employees and cost control measures. This infrastructure also means that we can leverage this investment and grow our service capabilities substantially by adding direct technical labor only as required. We also are developing more experience and expertise in the deployment of our CPS and infrastructure solutions as this business grows, which we believe we can leverage into improved margins and lower costs for us.

Gross profit

The following table summarizes for the periods indicated a year-over-year comparison of our gross profit (in thousands):

Year	Annual Amount	Change from Prior Year	Percent Change	Gross Margin
2011	$ 17,901	$ (119)	(1)%	24%
2010	18,020	$ 8,790	95%	28%
2009	9,230	—	—	23%

The decrease in gross profit margin in 2011 compared to 2010 reflects the impact of an increase in sales of our CPS and infrastructure products as a percentage of our total revenue and the decline in our UPS systems revenue. Generally, we realize lower margins on our CPS and infrastructure products than sales of our UPS products because they include a higher proportion of third party ancillary equipment that we are not able to resell at margins that are comparable to our UPS products. A change in sales mix driven by an increase in revenues from these lower margin products as a percentage of total revenues will result in a lower gross profit for our business. Our margins were also negatively impacted by lower margins on professional services in Europe related to CPS system installation and management, and from higher unabsorbed overhead costs from our manufacturing operations due to lower UPS product revenue. Our costs for manufacturing infrastructure products did increase faster than our ability to increase revenue from these products in 2011, resulting in lower product margins compared to 2010 for this revenue source.

Our ability to improve our gross profit will depend, in part, on our ability to continue to reduce material costs for all of our products, improve our sales channel mix in favor of direct sales versus OEM sales, increase sales of higher margin products such as our UPS products, increase product prices where necessary, improve our professional service margins through pricing and operating efficiency, and increase our total revenues to a level that will allow us to improve the utilization of our manufacturing and service operations.

Research and development

Research and development expense primarily consists of compensation and related costs for employees engaged in research, development and engineering activities, third party consulting and development activities, as well as an allocated portion of our occupancy costs. The following table summarizes for the periods indicated, a year-over-year comparison of our research and development expense (in thousands):

Year	Annual Amount	Change from Prior Year	Percent Change
2011	$ 4,739	$ 1,327	39%
2010	3,412	$ (758)	(18)%
2009	4,170	—	—

Overall our research and development expenses were approximately $1.3 million, or 39%, higher in 2011 compared to 2010. We are currently developing a next generation of UPS product that we believe will offer greater power modularity and space efficiencies compared to our existing UPS products, especially as we target the higher power market segments. We have increased headcount to support this new product development and to support new infrastructure and CPS products that we believe will contribute to future revenue growth for us. It is anticipated that the new UPS product line will allow improved profit margins and provide a larger addressable market for our UPS systems business. Our research and development efforts in 2010 were largely focused on new configurations of our existing flywheel technology, as well as refinements and enhancements to the standardization of our PowerHouse and containerized infrastructure solution products. Research and development expenses included approximately $166,000 and $80,000 of stock-based compensation expense in 2011 and 2010, respectively. We anticipate our research and development expenditures in 2012 will increase compared to 2011 as we finalize development of our next-generation UPS products and as we broaden our product portfolio, but will decrease as a percentage of sales in the future as our revenues grow.

Selling and marketing

Selling and marketing expense primarily consists of compensation, including variable sales compensation, and related costs, for sales and marketing personnel, and related travel, selling and marketing expenses, compensation paid to resellers and agents, as well as an allocated portion of our occupancy costs and the cost of our foreign sales operations. The following table summarizes for the periods indicated, a year-over-year comparison of our selling and marketing expense (in thousands):

Year	Annual Amount	Change from Prior Year	Percent Change
2011	$ 13,812	$ 719	5%
2010	13,093	$ 1,662	15%
2009	11,431	—	—

Selling and marketing costs were approximately $719,000, or 5%, higher in 2011 compared to 2010. The increase from 2010 reflects higher salary costs as a result of an increase in headcount for our direct sales organization in the U.S. offset, in part, by lower variable sales compensation due to our lower gross margins. The increase also reflects increased headcount as we focus on marketing efforts on building and improving the Active Power brand and expanding our sales organization, particularly in Europe and Asia, to support our direct selling and channel sales activities. We added specific sales resources to support each of our OEM and IT sales channels during 2010 and 2011, which we believe contributed to the improved performance from each of these channels. We also incurred additional expenses of approximately $460,000 related to the closing of our office in Japan in December 2011. Selling and marketing expenses also include approximately $455,000 and $304,000 of stock-based compensation expense in 2011 and 2010, respectively. We anticipate that our selling and marketing expenses will continue to increase as our revenues grow, due to higher variable compensation expense, and as we continue to invest in marketing to grow our global brand awareness.

General and administrative

General and administrative expense is primarily comprised of compensation and related costs for board, executive and administrative personnel, professional fees, and taxes, including sales, property and franchise taxes and the allowance for doubtful accounts expense. The following table summarizes for the periods indicated, a year-over-year comparison of our selling, general and administrative expense (in thousands):

Year	Annual Amount	Change from Prior Year	Percent Change
2011	$ 6,230	$ 911	17%
2010	5,319	$ 727	16%
2009	4,592	—	—

General and administrative expenses for 2011 increased approximately $900,000, or 17%, compared to 2010. This increase primarily reflects costs incurred of approximately $926,000 related to the separation of employment of our former Chief Executive Officer in October 2011 and for costs incurred in our efforts to hire a new Chief Executive Officer. General and administrative expenses also included approximately $807,000 and $558,000 in stock-based compensation expense in 2011 and 2010, respectively. We anticipate that the level of general and administrative expenses in 2012 should remain at similar levels to those in 2011 absent the costs associated with the change in personnel.

Interest expense, net

The following table summarizes the yearly changes in our interest (expense) income (in thousands):

Year	Annual Amount	Change from Prior Year	Percent Change
2011	$ (225)	$ 103	84%
2010	(122)	$ 53	77%
2009	(69)	—	—

The increase in net interest expense in 2011 primarily reflects lower interest income earned on lower interest rates as well as higher interest expense as we had a larger average outstanding balance on our revolving credit facility in 2011. We negotiated a $12.5 million revolving credit facility with our bank in August 2010 that incurs a minimum monthly interest charge that also resulted in higher interest expense. Our average cash and investments balance over 2011 has increased by $1.4 million, or 12%, compared to the average balance over 2010, reflecting the $3.0 million in borrowing under our revolving line of credit in 2011.

Other income (expense), net

Other income (expense) in the years ended 2011 and 2010 reflects foreign exchange gains (losses) on a bank account held in foreign currencies by our subsidiary companies.

Income tax expense

Due to operating losses, we have not recorded any income tax expenses, other than minimum or statutory costs. During 2011 we recorded a net tax benefit due to certain tax credits that we earned. As of December 31, 2011, our accumulated net operating loss carryforward was $210.0 million and our research and development credit carry-forwards were $3.3 million. We anticipate that these loss carry-forward amounts may offset future taxable income that we may achieve and future tax liabilities. However, because of uncertainty regarding our ability to use these carry-forwards and the potential limitations due to ownership changes, we have established a valuation allowance for the full amount of our net deferred tax assets

Comparison of 2010 to 2009

Product revenue

Product revenue represented 81% and 86% of total revenue for 2009 and 2010, respectively. The majority of our product revenue growth in 2010 came from the sale of our CPS and infrastructure solutions. We were able to significantly increase volume for these products through our IT channel partners and also with our direct sales organization, particularly in the North American market. We introduced the containerized data center infrastructure solutions during 2010 as a way to provide complimentary products for, and to help in sale of our PowerHouse products into the modular data center market. We have also been successful at selling our PowerHouse product directly to military, utility and data center customers during 2010. Our efforts to grow CPS and infrastructure solution sales reflects our strategy of focusing on selling total solutions and not just UPS products to our customers. This strategy has also led to a decrease in the growth in UPS products compared to our other product categories.

Product sales from our IT channel partners represented 27% of our product revenues for 2010 compared to 15% of product revenues in 2009. This growth reflects the increased sales of CPS and infrastructure solutions during 2010 by our IT channel partners for their end-customers.

Product sales from our OEM channels represented 20% of our total revenue for 2010 compared to 26% in 2009 and are primarily from the sale of UPS systems. The decrease in the percentage of total revenues derived from our OEM channels occurred despite an actual increase in sales by our OEM partners, as our IT channel and direct sales businesses grew at much faster rates. Product revenue from our OEM channels increased by 30% in 2010 over 2009, after declining by 44% in 2009 compared to 2008, reflecting improved performance from our OEM channel.

North America sales were 73% of our total revenue for 2010, compared to 71% for 2009. In total, our North America sales increased by 66% in 2010 compared to 2009, reflecting the overall growth in the market for our products in total and in particular for our data center infrastructure solutions and the improvement in overall market conditions within the U.S. data center market. Our sales in Europe increased by 42% in 2010 to $13.0 million as we continue to expand our sales force and operations in Germany and the UK in particular. Our sales in Asia increased by 82% in 2010 to $4.4 million, highlighted by stronger PowerHouse sales in China. In August 2010 we opened our first sales office in China as part of our effort to add sales and service capabilities to this market.

Service and other revenue

Service and other revenue increased by 25% for 2010, compared to 2009. This increase is primarily due to higher levels of service and contract work from direct product sales and from professional fees associated with PowerHouse and other CPS sales. We also had increased service revenues from maintenance contracts and repair related activities as our increasing install base of UPS customers provides greater opportunities to generate such revenues.

Cost of product revenue

The 55% increase in cost of product revenue from 2009 to 2010 was driven by the 69% increase in product revenues that we experienced in 2010, as well as our continuous cost reduction efforts. Cost of product revenue also included $146,000 and $169,000 of stock-based compensation expense in 2010 and 2009, respectively. The cost of product revenue as a percentage of total product revenue was 72% in 2010, as compared to 79% for 2009. This decrease in cost as a percentage of revenue compared to 2009 is due primarily to increased sales volumes, which resulted in more efficient utilization of our manufacturing facility and a lower level of unabsorbed overhead costs.

We have been able to improve our gross product margins by increasing the average selling price of our products that we sell as well as by lowering our product cost. This has been partially offset by the impact of increased sales of our CPS, such as PowerHouse. We also have ongoing programs within our engineering and manufacturing departments to lower product costs, to identify alternative and cheaper vendors if possible, without impacting quality levels, to reduce our absolute level of overhead spending and headcount, and to improve the manufacturability of our products. During 2010 these efforts have helped reduce our cost of product revenue in spite of the pressures of higher raw material and commodity price increases. We have also been able to utilize manufacturing personnel in the manufacture of our PowerHouse and infrastructure solution products, which has further improved the efficiency of our manufacturing operations.

Cost of service and other revenue

The cost of service and other revenue increased by 31% in 2010 compared to 2009 while our service and other revenues increased by 25%. As a percentage of service and other revenues, our costs were 74% of revenue in 2010, compared to 70% in 2009. This increase reflects higher costs relative to the increase in service and other revenues as we continue to expand our service team to broaden the geographic regions where we have service capability as our total business grows.

Gross profit

The 95% increase in our gross profit for 2010 relative to 2009 was primarily driven by the 61% increase in total revenues, higher average selling prices for all of our products, and better utilization of our manufacturing capacity, which resulted in lower unabsorbed overhead costs. The introduction and higher sales of new products such as the data center infrastructure solutions also generated higher absolute profits than sales of UPS systems because of the higher transaction values.

Research and development

Our research and development efforts in 2010 were largely focused on new configurations of our existing flywheel technology, as well as refinements and enhancements to the standardization of our PowerHouse and containerized infrastructure solution products. During 2010 a number of our engineering employees also worked directly on specific customer projects for customization and enhancement of modular products, and $177,000 of research and development expenses were charged to cost of product revenues to reflect the time and expense incurred in generating such revenues. Absent this, our research and development costs would have decreased by $581,000 or 14%. This decrease in spending compared to 2009 reflected lower project related development costs in 2010 as well as lower headcount costs. Expenses in 2009 also included higher prototype and development costs from paralleling our megawatt-class UPS products. Research and development expenses included approximately $80,000 and $171,000 of stock-based compensation expense in 2010 and 2009, respectively.

Selling and marketing

The increase in selling and marketing expense in 2010 relative to 2009 primarily reflects higher variable sales compensation, including payments made to third-party representatives, and performance-based compensation as a result of higher revenue and improved results. The increase also reflected increased headcount as we focus on building and improving the Active Power brand and expanding our sales organization, particularly in Europe and Asia, to support our direct selling and channel sales activities. We added specific sales resources to support each of our OEM and IT sales channels during 2010, which we believe contributed to the improved performance from each of these channels in 2010. Selling and marketing expenses also include approximately $304,000 and $313,000 of stock-based compensation expense in 2010 and 2009, respectively.

General and administrative

The increase in general and administrative expense from 2009 to 2010 primarily reflects higher performance-based compensation expenses incurred as our overall financial results improved, which were partially offset by lower professional and consulting services fees in 2010. General and administrative expenses included approximately $558,000 and $573,000 in stock-based compensation expense in 2010 and 2009, respectively.

Interest income (expense)

The increase in net interest expense in 2010 primarily reflects lower interest income earned on lower interest rates, as well as a lower level of average cash invested compared to 2009. We also incurred higher interest expense as we had a larger average outstanding balance on our revolving credit facility in 2010. We negotiated a new $12.5 million revolving credit facility with our bank in August 2010 that incurs a minimum monthly interest charge that also resulted in higher interest expense. Our average cash and investments balance over 2010 has increased by $2.2 million, or 23%, compared to the average balance over 2009.

Other expense, net

Net other expense in the years ended 2010 and 2009 reflected foreign exchange gains (losses) on a bank account held in foreign currencies by our subsidiary companies.

Income tax expense

Due to operating losses, we have not recorded any income tax expenses, other than minimum or statutory costs. During 2010 we recorded a net tax benefit due to certain tax credits that we earned.

Liquidity and Capital Resources

Our primary sources of liquidity at December 31, 2011 are our cash and investments on hand, our bank credit facilities and projected cash flows from operating activities. If we meet our cash flow projections in our current business plan, we expect that we have adequate capital resources in order to continue operating our business for at least the next 12 months. Our business plan and our assumptions around the adequacy of our liquidity are based on estimates regarding expected revenues and future costs. However, there are scenarios in which our revenues may not meet our projections, our costs may exceed our estimates or our working capital needs may be greater than anticipated. Further, our estimates may change and future events or developments may also affect our estimates. Any of these factors may change our expectation of cash usage in 2012 and beyond or significantly affect our level of liquidity.

In August 2010, we entered into a Second Amended and Restated Loan and Security Agreement (the “Loan Agreement”) with our existing bank, Silicon Valley Bank (“SVB”) which increased the total availability from $6.0 million to $12.5 million subject to certain borrowing bases. This facility expanded our ability to borrow funds from U.S. receivables to include qualifying receivables from our UK operations as well, increased our ability to use inventory as collateral, and also added an ability to borrow against purchase orders. These additional bases of borrowing were designed to allow us to use the credit facility to fund inventory purchases in the event we received large or multiple sales orders that would require a major investment in inventory and work in progress such as our PowerHouse and infrastructure solutions business, to help fund continued growth in our business and to manage our working capital requirements.

This two-year loan facility provides for a secured revolving line of credit in an aggregate amount of up to eighty percent (80%) of the facility amount of $15.625 million, or $12.5 million, subject to certain borrowing bases. In the event we have maintained unrestricted cash and cash equivalents of at least $6.25 million with SVB for at least 30 consecutive days, which is referred to as being in a "Streamline Period", the borrowing base formula is based on eligible accounts receivable, eligible purchase orders and eligible inventory, subject to a sublimit of $5 million for U.K. accounts receivable, $3.5 million for inventory and $1.5 million for purchase orders. When we are not in a Streamline Period, our borrowings are limited based on accounts receivable and purchase orders that SVB has specifically agreed to finance and a borrowing base for eligible inventory. We may also request that SVB issue letters of credit on our behalf, of up to $1.5 million, as a portion of our total loan facility.

On August 5, 2010, we borrowed approximately $2.5 million in revolving loans, all of which was used to refinance all indebtedness owing from the Company to SVB under our previous credit facility. The credit facility increases the total credit available from our previous loan facility with SVB, which was $6.0 million, and enables us to borrow against eligible inventory, foreign receivables and customer purchase orders in addition to eligible accounts receivable.

During 2011, we have borrowed amounts under this credit facility based on our short term liquidity requirements. Based on the borrowing base formula, we had an additional $1.9 million available for use at December 31, 2011 under this credit facility.

When a Streamline Period is in effect, each advance based upon accounts receivable and inventory accrues interest at a per annum rate equal to SVB's prime rate, subject to a minimum prime rate of four percent (4.00%), plus one and one-half percent (1.50%) and each advance based upon a purchase order inventory accrues interest at a per annum rate equal to SVB's prime rate, subject to a minimum prime rate of four percent (4.00%), plus two percent (2.00%). When a Streamline Period is not in effect, each advance based upon accounts receivable and inventory accrues interest at a per annum rate equal to SVB's prime rate, subject to a minimum prime rate of four percent (4.00%), plus three and five-eighths percent (3.625%) and each advance based upon a purchase order accrues interest at a per annum rate equal to SVB's prime rate, subject to a minimum prime rate of four percent (4.00%), plus six and one-half percent (6.50%). Finance charges and interest are payable monthly, and all principal and interest is due on the maturity date of August 5, 2012. However, when we are not in a Streamline Period, we must repay advances based on receivables when we receive payment on the receivable that has been financed, and we must repay advances based on purchase orders within 120 days of the date of the purchase order, together with all finance charges on such advances.

The revolving loans made to us under this loan facility are secured by a lien on substantially all of our assets. In addition, on August 5, 2010, Active Power Solutions Limited, a wholly-owned United Kingdom subsidiary of the Company, entered into a Guarantee and Debenture with SVB (the "Guarantee and Debenture"), pursuant to which Active Power Solutions Limited guarantied all of the obligations of the Company under the Loan Agreement and secured its obligations under the Guarantee and Debenture with a security interest on substantially all of its assets.

The Loan Agreement includes customary affirmative covenants for a credit facility of this size and type, including delivery of financial statements, compliance with laws, maintenance of insurance and protection of intellectual property rights. Further, the Loan Agreement contains customary negative covenants for a credit facility of this size and type, including covenants that limit or restrict our ability, among other things, to dispose of assets, change our business, change our CEO or CFO without replacing such person within 120 days, have a change in control, make acquisitions, be acquired, incur indebtedness, grant liens, make investments, make distributions, repurchase stock, and enter into certain transactions with affiliates. The Loan Agreement also requires the Company to maintain a minimum liquidity ratio of 1.25:1. The liquidity ratio is defined as the ratio of unrestricted cash and cash equivalents and marketable securities plus eligible accounts receivable to all indebtedness owed by the Company to SVB. The Company is currently in compliance with all loan covenants under the Loan Agreement.

The Loan Agreement contains customary events of default that include, among other things, non-payment defaults, covenant defaults, material adverse change defaults, insolvency defaults, material judgment defaults and inaccuracy of representations and warranty defaults. The occurrence of an event of default could result in the acceleration of obligations under the Loan Agreement, in which case the Company must repay all loans and related charges, fees and amounts then due and payable, and our subsidiary may be required to pay any such amounts under the Guarantee and Debenture. At the election of SVB, upon the occurrence and during the continuance of an event of default, finance charges or interest rates, as applicable, will increase an additional five percentage points (5.00%) per annum above the rate that is otherwise applicable thereto upon the occurrence of such event of default, and the collateral handling fees will increase by one-half percent (0.50%).

A substantial increase in sales of our PowerHouse or our infrastructure solutions products or a substantial increase in UPS sales may materially impact the amount of liquidity required to fund our operations. The amount of time between the receipt of payment from our customers and our expenditures for raw materials, manufacturing and shipment of products (the cash cycle) for sales of our CleanSource UPS product can be as short as 45 days, and is typically 60 days. However, the cash cycle on a PowerHouse sale can be as much as 210 days, depending upon customer payment terms. We intend to mitigate the financial impact of this longer cash cycle by requiring customer deposits and periodic payments where possible from our customers. This is not always commercially feasible, and in order to increase our PowerHouse sales, we may be required to make larger investments in inventory and receivables. These larger investments may require us to obtain additional sources of working capital, debt or equity financing in order to fund this business.

Should additional funding be required or desirable, we would expect to raise the required funds through borrowings or public or private sales of debt or equity securities. If we raise additional funds through the issuance of debt or equity securities, the ownership of our stockholders could be significantly diluted. If we obtain additional debt financing, a substantial portion of our operating cash flow may be dedicated to the payment of principal and interest on such indebtedness, and the terms of the debt securities issued could impose significant restrictions on our operations. We do not know whether we will be able to secure additional funding, or funding on terms acceptable to us, to continue our operations as planned. If financing is not available, we may be required to reduce, delay or eliminate certain activities or to license or sell to others some of our proprietary technology.

Significant uses of cash

Operating Activities

The following table summarizes the yearly changes in cash provided by (used in) operating activities (in thousands):

Year	Annual Amount	Change from Prior Year	Percent Change
2011	$ (6,261)	$ (6,329)	(9307)%
2010	68	$ 6,984	101%
2009	(6,916)	—	—

Cash used in operating activities was $6.3 million in 2011 compared to cash provided by operating activities of $0.07 million in 2010, a decrease of $6.3 million. This change in cash used in operating activities was primarily due to the $3.1 million increase in our operating losses and due to changes in current assets and current liabilities, or our net working capital. Changes in our net working capital, resulted in cash used of $2.5 million in 2011, compared to cash provided from such working capital of $0.8 million in 2010. Cash used in operating activities in 2011 included approximately $1.4 million in costs attributable to the departure of our Chief Executive Officer and costs associated with closure of certain foreign operations.

As our business continues to grow, we have had to finance a larger level of inventory and receivables to support this higher level of activity, particularly with our PowerHouse and infrastructure solutions which have a much longer construction time than our UPS business and are typically larger in value. Our receivables decreased by $3.5 million or 24% during 2011, offset by an increase in inventory of $3.0 million in 2011 and a decrease in accounts payable of $1.3 million. These changes reflect the frequent changes in our working capital that can result in very large fluctuation in inventory, payables and receivables, even weekly, based on the large size of some of our orders. On an annual basis, the decrease in trade payables and the increase in inventory were offset by the decrease in receivables.

Our top five customers represented 62% of our total revenue during 2011. In addition, as of December 31, 2011, our five largest receivables were 75% of our total receivables. As a result of this customer concentration, our failure to collect receivables from any of these customers in a timely manner could have a significant adverse effect on our liquidity. This risk may potentially increase as we sell more PowerHouse products due to their higher average selling price. We do continue to request deposits and periodic payments from large customers where commercially possible, particularly for projects with multiple deliverables. However, the amount of such advance payments can fluctuate significantly on a quarterly basis, depending on the size and scope of customer orders at any point in time. As a result, we will need to continue to focus on management of cash and working capital in 2012 in order to manage the level of funds we use in our operating activities.

Cash provided by operating activities was $.07 million in 2010 compared to cash used in operating activities of $6.9 million in 2009. This change in cash used in operating activities was primarily due to lower operating losses. In addition, changes in our net working capital, resulted in cash provided of $0.8 million in 2010, compared to cash provided from such working capital of $0.4 million in 2009.

Investing Activities

Investing activities primarily consist of sales and purchases of investments and purchases of property and equipment. Fluctuations in the sale and purchase of investments generally reflect our use of these investment funds to finance our ongoing operations. The cash used in investing activities increased from $1.2 million in 2010 to $2.7 million in 2011 as we had less short-term investments available to liquidate to fund our business and due to increased capital expenditures in 2011 as we supported our sales and marketing programs with PowerHouse demonstration units in the US, China and Germany. Capital expenditures increased in 2010 from 2009 by approximately $1.2 million. This increase primarily related to purchasing of equipment to support our sales and marketing activities. We historically invested in our manufacturing infrastructure and, because we have a production capacity in excess of our current revenue level we can substantially increase our production levels without needing to make any material capital investments. Our capital expenditures therefore will primarily support expansion of our sales and service capabilities and our marketing and administrative efforts as required.

Financing Activities

Funds provided by financing activities during 2011 reflect the draw on our revolving line of credit of $3.0 million and proceeds from employee stock purchases. Funds provided by financing activities in 2010 primarily reflect the sale of common stock by the Company. In February 2010 we sold approximately 13.25 million shares of common stock in a firm-commitment underwritten offering at a purchase price of $0.75 per share, for proceeds, net of fees and expenses, of $9.0 million.

We expect the level of capital investments to decrease in 2012 compared to 2011.

Contractual Obligations

In our day-to-day operations, we incur commitments to make future payments for goods and services. These arise from entering into operating leases and as we make commitments to vendors to provide us materials and services. The following table summarizes our significant contractual obligations and commitments at December 31, 2011 (in thousands):

	Payment due by period				
Contractual Obligations	**Total**	**Less than 1 year**	**1-3 years**	**3-5 years**	**More than 5 years**
Operating lease obligations	$ 6,231	$ 1,294	$ 2,312	$ 2,062	$ 563
Purchase obligations	7,462	7,462	—	—	—
Other long-term obligations	150	25	50	50	25

Our principal lease commitments consist of our leases for our corporate headquarters and engineering and administration facilities and our global sales offices.

In 2007, we entered into a secured revolving line of credit facility of up to $5 million, subject to a borrowing base formula, with SVB. This facility was modified in 2008 to increase the limit to $6 million. In August 2010, we entered into a Second Amended and Restated Loan and Security Agreement with SVB. This new credit facility increased the total liquidity available from $6.0 million to $12.5 million subject to certain borrowing bases. There was $5.5 million and $2.5 million outstanding under this facility at December 31, 2011 and 2010, respectively.

Future uses of cash

We believe that our cash and investments, projected cash flows from operations and sources of available liquidity will be sufficient to fund our operations for at least the next twelve months. Our cash cycle is such that we generally have visibility two to three quarters in advance for future orders that allows us to predict revenues over this period of time with some degree of confidence. However, a sudden change in business volume, positive or negative, from any of our business or channel partners or in our direct business or any customer-driven events such as order or delivery deferral could significantly impact our expected revenues. The recent global economic downturn has reduced our confidence at predicting future revenues, and even with improving economic conditions, there is still uncertainty and risk in our forecasting. This two to three quarter window of sales visibility does provide us with some opportunity to adjust expenditures or take other measures to reduce our cash consumption if we can see and anticipate a shortfall in revenue or give us time to identify additional sources of funding if we anticipate an increase in our working capital requirements due to increased revenues or changes in our revenue mix. A significant increase in sales, especially in our PowerHouse or our infrastructure solutions business, would likely increase our working capital requirements, due to the longer production time and cash cycle of sales of these products.

We expect the level of capital investments to decrease in 2012 compared to 2011 primarily as a result of our investment in 2011 in PowerHouse demonstration units for a number of our sales offices.

Other factors that may affect liquidity

Beyond the next twelve months, our cash requirements will depend on many factors, including the rate of sales growth, the market acceptance of our products, the gross profit we are able to generate with our sales, the timing and level of development funding, the rate of expansion of our sales and marketing activities, the rate of expansion of our manufacturing processes, and the timing and extent of research and development projects. Although we are not a party to any agreement or letter of intent with respect to a potential acquisition or merger, we may enter into acquisitions or strategic arrangements in the future to help accelerate our growth, which could also require us to seek additional equity or debt financing. Should additional funding be required or desirable, we may need to raise the required funds through borrowings or public or private sales of debt or equity securities. If we raise additional funds through the issuance of debt or equity securities, the percentage ownership of our stockholders could be significantly diluted. If we obtain additional debt financing, a substantial portion of our operating cash flow may be dedicated to the payment of principal and interest on such indebtedness, and the terms of the debt securities issued could impose significant restrictions on our operations. Our existing bank facilities expire in October 2012, although we believe that we will be able to extend or renew this facility on substantially similar terms to our current arrangement. We do not know whether we will be able to secure additional funding, or funding on terms acceptable to us, to continue our operations as planned. If financing is not available, we may be required to reduce, delay or eliminate certain activities or to license or sell to others some of our proprietary technology.

Off-Balance Sheet Arrangements

During the years ended December 31, 2009, 2010 and 2011, we did not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

New Accounting Pronouncements

On January 1, 2010, we adopted amendments to authoritative literature that modifies the revenue recognition guidance for establishing separate units of accounting in a multiple element arrangement and requires the allocation of arrangement consideration to each deliverable in the arrangement based on relative selling price of the elements. The selling price for each deliverable is based on vendor-specific objective evidence (“VSOE”) if available, third-party evidence (“TPE”) if VSOE is not available, or best estimate of selling price (“BESP”) if neither VSOE nor TPE is available. BESP must be determined in a manner that is consistent with that used to determine the price to sell the specific elements on a standalone basis. The authoritative literature permits prospective or retrospective adoption, and we elected prospective adoption. Other than the increased disclosure requirements of adoption of this policy, the adoption of these amendments did not change our units of accounting, allocation of arrangement consideration, or pattern or timing of revenue recognition. It also did not have a significant impact on our financial position, results of operations, or cash flows for the year ended December 31, 2011.

ITEM 7A. Quantitative and Qualitative Disclosures About Market Risk.

We invest our cash in a variety of financial instruments, including bank time deposits, and taxable variable rate and fixed rate obligations of corporations, municipalities, and local, state and national government entities and agencies. These investments are denominated in U.S. dollars.

Our interest income is sensitive to changes in the general level of U.S. interest rates, particularly since the majority of our investments are in short-term instruments. We believe that our investment policy is conservative, both in terms of the average maturity of investments that we allow and in terms of the credit quality of the investments we hold. Because of the nature of the majority of our investments, we do not believe a 1% decline in interest rates would have a material effect on our interest income or fair value of our investments.

Our international sales were historically made in U.S. dollars. As we have increased sales in foreign markets and opened operations in multiple foreign countries, we have executed more transactions that are denominated in other currencies, primarily Euro and British pounds. Those sales and expenses in currencies other than U.S. dollars can result in translation gains and losses which have not been significant to date. Currently, we do not engage in hedging activities for our international operations other than an increasing amount of sales and support expenses being incurred in foreign currencies as a natural hedge. However, recent volatility in currencies, particularly with the pound and Euro, is increasing the amount of potential translation gains and losses and we may engage in hedging activities in the future to mitigate the risks caused by such currency volatility.

Our international business is subject to the typical risks of any international business, including, but not limited to, the risks described in Item 1A, "Risk Factors." Accordingly, our future results could be materially harmed by the actual occurrence of any of these or other risks.

ITEM 8. Financial Statements and Selected Quarterly Financial Data.

The Financial Statements and Selected Quarterly Financial Data required by this item are included in Part IV, Item 15(a)(1) and are presented beginning on Page 58.

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

None.

ITEM 9A. Controls and Procedures.

Effectiveness of Disclosure Controls and Procedures.

Our Chief Executive Officer and our Chief Financial Officer, based on the evaluation of our disclosure controls and procedures (as defined in Rule 13a-15(e) or 15d-15(e) under the Securities Exchange Act of 1934, as amended) required by paragraph (b) of Rule 13a-15 or Rule 15d-15, have concluded that, as of December 31, 2011, our disclosure controls and procedures were effective to ensure that the information we are required to disclose in reports that we file or submit under the Securities Exchange Act of 1934, as amended, (i) is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and (ii) is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Management's Report on Internal Control over Financial Reporting.

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act rules 13a-15(f) and 15d-15(f). Internal control over financial reporting is a process, designed by, or under the supervision of, our Chief Executive Officer and Chief Financial Officer, and effected by our Board, 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.

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

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2011. In making this assessment, management used the criteria set forth in Internal Control – Integrated Framework issued by COSO. A material weakness is a control deficiency, or combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. Based on our assessment, management concluded that, as of December 31, 2011, our internal control over financial reporting was effective to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles.

Our independent registered public accounting firm, Grant Thornton LLP, audited our consolidated financial statements, and independently assessed the effectiveness of our internal control over financial reporting. Grant Thornton LLP has issued their report, which is included in Part IV of this Form 10-K.

Changes in Internal Control over Financial Reporting.

There have been no changes in our internal control over financial reporting during the quarter ended December 31, 2011 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Forward looking statements regarding the effectiveness of internal controls during future periods are subject to the risk that controls may become inadequate because of change in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

ITEM 9B. Other Information.

None.

PART III.

ITEM 10. Directors and Executive Officers of the Registrant.

The following table sets forth certain biographical information concerning our current directors, and executive officers:

Name	Age	Position(s)
Jan H. Lindelow	67	Director, Interim President & Chief Executive Officer
John K. Penver	49	Vice President of Finance, Chief Financial Officer and Secretary
Lisa M. Brown	46	Vice President—Marketing & Sales Operations
Jeremiah Noel Foley	51	Vice President- Engineering
Uwe Schrader-Hausmann	57	Chief Technical Officer
Jason P. Rubin	46	Vice President—Manufacturing
Martin T. Olsen	34	Vice President—Global Sales
Ake Almgren	65	Director
Rodney S. Bond	67	Director
James E.deVenny III	64	Director
Robert S. Greenberg	58	Director
Benjamin L. Scott	62	Director

Executive Officers

Jan H. Lindelow has served as a member of our Board of Directors since February 1998. In October 2011 Mr. Lindelow was appointed as our interim President and Chief Executive Officer, to serve until the effective date of the appointment of his permanent successor to this role. Mr. Lindelow joined Tivoli, a unit of the IBM Software Group, in June 1997 and served as Chairman and Chief Executive Officer of Tivoli until the spring of 2001. He then became Vice President, Emerging Business Development for IBM until his retirement in 2002. From 1994 to 1995, Mr. Lindelow was President and Chief Operating Officer of Symbol Technologies, a leader in handheld computing and scanning technologies. He also served in several senior executive positions with ABB Limited ("ABB"), a global company delivering power, energy and automation technologies from 1988 to 1994. Prior to ABB, Mr. Lindelow was President of Worldwide Sales and Service at Unisys/Sperry Computer Systems, a worldwide information technology services and solutions company. Mr. Lindelow joined Unisys/Sperry in his native Sweden where he subsequently became President of Sperry's Nordic Group. Mr. Lindelow holds a M.S. in Electrical Engineering from the Royal Institute of Technology in Stockholm, Sweden.

John K. Penver was hired in February 2005 as Chief Financial Officer and Vice President of Finance and oversees all of our accounting, finance, treasury, and investor relations activities. Prior to joining Active Power, Mr. Penver served as Chief Financial Officer or Vice President Finance for a number of public and private technology and manufacturing-based organizations, including PerformanceRetail, Inc. a privately held retail management software company, Factory Logic, Inc., a privately held enterprise-application software company, Yclip Corporation, a privately held internet-marketing software company, and Silicon Gaming, Inc., a publicly traded manufacturer of high-technology slot machines for the gaming industry. Mr. Penver also had twelve years of audit experience with the international accounting firm of Deloitte & Touche LLP in both the U.S. and Australia. Mr. Penver is a Certified Public Accountant and a Chartered Accountant, and holds a Bachelor of Business in Accounting from Monash University in Australia and an M.B.A. from Santa Clara University in California.

Lisa M. Brown was hired in December 2005 as our Vice President of Marketing and Sales Operations. In this role she is responsible for all of our product and corporate marketing, product development, public relations and sales operations functions. Prior to joining Active Power Ms. Brown spent 14 years with Broadwing Communications, a telecommunications infrastructure provider, where she held executive positions including Vice President of Marketing, Sales Operations and Customer Operations. Ms. Brown holds a Bachelor of Science degree in Business Administration, Finance, from Bloomsburg University in Pennsylvania.

J. Noel Foley joined Active Power in November 2011 as our Vice President of Engineering. In this role he is responsible for all of our product development and sustaining engineering activities. From November 2008 until joining Active Power Mr. Foley was most recently Vice President Engineering for SolarBridge Technologies, Inc, a manufacturer of AC power products for the solar industry. Prior to this, from 2003 until 2008, Mr. Foley was employed by Dell Computer Corporation most recently as the Senior Manager –AC/DC power supplies and DC/DC converters within Dell's product development group. Prior to this Mr. Foley held a number of executive roles for companies including Lucent Technologies, Vicor Corporation, Computer Products/Artesyn Technologies in the U.S. and Ireland, and with GEC Corporation in the UK. Mr. Foley is a U.S. patent holder and holds a Bachelor of Electrical Engineering degree from University College, Cork, Ireland and a Masters degree in Business Administration from Boston College

Uwe Schrader-Hausmann joined Active Power in August 2005 and held various positions in our EMEA sales engineering group and as Managing Director of Active Power (Germany) GmbH before being promoted to Vice President—Technical Services in October 2007 and then to Chief Technical Officer in January 2009. In this role he is responsible for all customer-facing technical service functions including management of our European applications engineering, project management, and project implementation activities,. Mr. Schrader-Hausmann has over 30 years of experience in the UPS industry. Prior to joining Active Power, he spent 26 years with Piller Power Systems GmbH, a German-based rotary UPS manufacturer, most recently as Chief Technical Officer. He also has UPS experience with Max Mueller Gildemeister GmbH in Germany. Mr. Schrader-Hausman holds a Diplom-Ingeneur (the German equivalent of a Master of Science degree) from The University of Applied Science in Hanover, Germany.

Jason P. Rubin joined Active Power in March 2000 as a production planner and held various positions in our manufacturing group before being promoted to Vice President of Manufacturing in October 2005. In this role, Mr. Rubin is responsible for the manufacture and testing of all Active Power products as well as managing all material and logistic requirements to support production and our customer service activities. Mr. Rubin has over 20 years of manufacturing experience in multiple industries and immediately prior to joining Active Power was involved in managing operations and manufacturing systems for Windsport, Inc., a fabricated textile manufacturer. Mr. Rubin holds a Bachelor of Science degree in Industrial Engineering from the University of Oklahoma in Norman, Oklahoma.

Martin T. Olsen joined Active Power in April 2007 as a Director of Product Management before being promoted in May 2008 to Vice President of Business Development. In January 2010 Mr. Olsen was promoted to Vice President—Channel Sales & Business Development. In December 2010, Mr. Olsen was promoted to Vice President – Global Sales. In this role Mr. Olsen is responsible for our global sales activity, including channel sales business for our OEM partners and our IT channel sales partners, as well as our business development activities to expand our product and sales distribution channels. Prior to joining Active Power, Mr. Olsen was the Director for the data center group at Wright Line LLC, a global data center infrastructure provider for four years, and prior to that was a product marketing manager with American Power Conversion Corp., a global UPS manufacturer in both the U.S. and Europe and Asia. He also has prior product management experience with Siligen AS, a manufacturer of power availability products in Denmark. A U.S. patent holder, Mr. Olsen holds a Bachelor of Science degree in Marketing from the International Business College at Kolding, Denmark, and diplomas in Logistics and International Business Law from the International Business College at Kolding, Denmark.

Directors

Ake Almgren has served as a member of our Board of Directors since March 2004. From March 2009 to September 2011, Dr. Almgren has served as the Chief Executive Officer and President of International Battery, a manufacturer of lithium ion cells and batteries. Since May 2003 Dr. Almgren has also served as President of his consultant company, ORKAS Corp. From July 1998 to May 2003, Dr. Almgren served as Chairman and Chief Executive Officer of Capstone Turbine Corp. Prior to his employment at Capstone, Dr. Almgren had a 26-year career at ABB, where he held the position of worldwide Business Area Manager for Distribution Transformers and managed the operation of 36 plants in 28 countries. He also was President of ABB Power T&D Company, President of ABB Power Distribution, and President of ABB Power Systems during his tenure at ABB. Dr. Almgren also serves on the board of managers of PJM Interconnect LLC and on the advisory board of Infinia Corporation. Dr. Almgren holds a Ph.D. in Engineering from Linkopings Tekniska Hogskola in Sweden and a Masters of Mechanical Engineering from the Royal Institute of Technology in Stockholm, Sweden.

Rodney S. Bond has served as a member of our Board of Directors since September 1994. From October 2000 to the present, Mr. Bond has served as a principal engaged in financial and strategic planning consulting at Sherman Partners, and was the Executive Vice President—Finance for Up Link Corporation, a privately held supplier of GPS business solutions for the golf industry, until its sale in 2009. From May 1990 to October 2000, Mr. Bond served in various capacities, including as Chief Strategic Officer and Chief Financial Officer, with VTEL Corporation, a publicly traded digital video communications company. Mr. Bond also serves on several private company boards and holds a B.S. in Metallurgical Engineering from the University of Illinois and an M.B.A. from Northwestern University in Illinois.

James E. J. deVenny III has served as a member of our Board of Directors since March 2008. From 1999 until March 2008, Mr. deVenny served as the co-founder, President and Chief Executive Officer of Dataside LLC, a Texas-based provider of enterprise data center space and managed network services. Mr. deVenny is now an independent consultant through his business, JD Investments. Prior to founding Dataside, Mr. deVenny co-founded Computex Support Systems where he was involved for 15 years in the design and development of mission critical data centers and telecommunications sites. Previously he spent five years as Vice President of Sales and Marketing for International Power Machines, a manufacturer of uninterruptible power supply systems. Mr. deVenny also serves on the Board of Directors of Lumenate, a private technology consulting services company, as well as on the board of Vedero Software, a software company which is in the energy savings and demand response field. He holds a Bachelor of Science degree in Journalism and Communications from the University of Florida.

Robert S. Greenberg has served as a member of our Board of Directors since March 2009. Since January 2009, Mr. Greenberg has been the Chief Information Officer and Vice President for Agco Corporation, a global manufacturer and distributor of agricultural equipment. Prior to joining Agco Corporation, Mr. Greenberg was Vice President and Chief Information Officer for five years with Nissan Americas, the U.S. subsidiary of Nissan Motor Ltd, a global automotive manufacturer. Mr. Greenberg also served in executive and Chief Information Officer capacities over 20 years with Avaya, Inc., a global enterprise communications provider, Dell, Inc and Exxon Mobil, including time spent in Asia Pacific. Mr. Greenberg holds both a Bachelor of Science and Masters of Engineering degrees in Operations Science and Industrial Engineering from Cornell University in New York and an M.B.A. in Finance from the University of Maryland.

Benjamin L. Scott has served as a member of our Board of Directors since March 2002 and as Chairman of the Board of Directors since February 2007. During 2009 Mr. Scott co-founded LiveOak Venture Partners, a venture capital firm. Prior to this, Mr. Scott served as a Venture Partner with Austin Ventures, a venture capital firm, from May 2002 until June 2009. From January 2000 to May 2002, Mr. Scott served as a Partner with Quadrant Management, a venture capital firm. From October 1997 to November 1999, Mr. Scott served as the Chairman and Chief Executive Officer of IXC Communications, a public provider of data and voice communications services that was subsequently sold to Cincinnati Bell and is now known as Broadwing Communications. Mr. Scott has served as a senior executive with AT&T, PrimeCo and Bell Atlantic. Mr. Scott also serves on the boards of directors of several private companies and holds a B.S. in Psychology from Virginia Polytechnic Institute and State University.

The other information also required under Item 10, including certain additional information about our directors, disclosure of delinquent Section 16 filings, our Code of Ethics and matters relating to our audit committee and its members will be included under the sections captioned “Proposal One: Election of Directors.” “Section 16(A) Beneficial Ownership Reporting Compliance”, “Corporate Governance” and “Meetings and Committees of the Board,” respectively, in our Proxy Statement for the 2012 Annual Meeting of Stockholders, which information is incorporated into this Annual Report by reference.

ITEM 11. Executive Compensation.

The information required by this Item will be included under the sections captioned “Executive Compensation,” “Compensation Committee Interlocks and Insider Participation,” “Compensation Committee Report” and “Certain Transactions” in our Proxy Statement for the 2012 Annual Meeting of Stockholders, which information is incorporated into this Annual Report by reference.

ITEM 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The information required by this Item will be included under the sections captioned “Ownership of Securities,” “Equity Compensation Plan Information” and “Potential Payments upon Termination or Change of Control” in our Proxy Statement for the 2012 Annual Meeting of Stockholders, which information is incorporated into this Annual Report by reference.

ITEM 13. Certain Relationships and Related Transactions.

The information required by this Item will be included under the sections captioned “Certain Transactions” and “Director Independence” in our Proxy Statement for the 2012 Annual Meeting of Stockholders, which information is incorporated into this Annual Report by reference.

ITEM 14. Principal Accountant Fees and Services.

The information required by this Item will be included under the section captioned “Proposal Three: Ratification of Independent Auditors” in our Proxy Statement for the 2012 Annual Meeting of Stockholders, which information is incorporated into this Annual Report by reference.

PART IV.

ITEM 15. Exhibits and Financial Statement Schedules.

(a)

1. *Financial Statements*.

The following financial statements of Active Power, Inc. were filed as a part of the original Annual Report on Form 10-K for the fiscal year ending December 31, 2011, that was filed with the Securities and Exchange Commission on March 1, 2012:

2. *Schedules*.

All schedules have been omitted since the information required by the schedule is not applicable, or is not present in amounts sufficient to require submission of the schedule, or because the information required is included in the Financial Statements and notes thereto.

3. *Exhibits*.

The exhibits listed on the accompanying index to exhibits immediately following the financial statements are filed herewith, or are incorporated by reference as indicated below.

(b) Exhibits

Exhibit Number	Description
3.1*	Restated Certificate of Incorporation (filed as Exhibit 3.1 to Active Power's Quarterly Report on Form 10-Q filed on July 28, 2006)
3.2*	Second Amended and Restated Bylaws (filed as Exhibit 3.2 to Active Power's Current Report on Form 8-K filed on February 2, 2007)
3.3*	Amendment to Second Amended and Restated Bylaws (filed as Exhibit 3.01 to Active Power's Current Report on Form 8-K filed on December 7, 2007)
4.1*	Specimen certificate for shares of Common Stock (filed as Exhibit 4.1 to Active Power's IPO Registration Statement on Form S-1 (SEC File No. 333-36946) (the "IPO Registration Statement"))
4.2	See Exhibits 3.1 and 3.2 for provisions of the Certificate of Incorporation and Bylaws of the registrant defining the rights of holders of common stock
10.1*	Form of Indemnity Agreement (filed as Exhibit 10.1 to the IPO Registration Statement)
10.2*	Active Power, Inc. 2000 Stock Incentive Plan (filed as Exhibit 10.2 to the IPO Registration Statement) †
10.3*	Second Amended and Restated Investors' Rights Agreement by and between Active Power, Inc. and certain of its stockholders (filed as Exhibit 10.4 to the IPO Registration Statement)

Exhibit Number	Description
10.4*	Lease Agreement by and between Active Power, Inc. and Braker Phase III, Ltd. (filed as Exhibit 10.9 to the IPO Registration Statement)
10.5*	First Amendment to Lease Agreement by and between Active Power, Inc. and Braker Phase III, Ltd. (filed as Exhibit 10.10 to the IPO Registration Statement)
10.6*	Second Amendment to Lease Agreement by and between Active Power, Inc. and Braker Phase III, Ltd. (filed as Exhibit 10.11 to the IPO Registration Statement)
10.7*	Third Amendment to Lease Agreement by and between Active Power, Inc. and Braker Phase III, Ltd. (filed as Exhibit 10.12 to the IPO Registration Statement)
10.8*	Fourth Amendment to Lease Agreement by and between Active Power, Inc. and Metropolitan Life Insurance Company (filed as Exhibit 10.13 to the IPO Registration Statement)
10.9*	Fifth Amendment to Lease Agreement by and between Active Power, Inc. and Metropolitan Life Insurance Company (filed as Exhibit 10.14 to the IPO Registration Statement)
10.10*	Sixth Amendment to Lease Agreement by and between Active Power, Inc. and Metropolitan Life Insurance Company (filed as Exhibit 10.18 to Active Power's Annual Report on Form 10-K for the fiscal year ended December 31, 2000 (the "2000 10-K"))
10.11*	Seventh Amendment to Lease Agreement by and between Active Power, Inc. and Metropolitan Life Insurance Company (filed as Exhibit 10.19 to the 2000 10-K)
10.12*	Lease Agreement by and between Active Power, Inc. and BC12 99, Ltd. (filed as Exhibit 10.17 to the 2000 10-K)
10.13*	Purchase Agreement effective as of January 1, 2008 between Active Power, Inc. and Caterpillar, Inc. (filed as Exhibit 10.1 to Active Power's Quarterly Report on Form 10-Q for the quarter ended March 31, 2008)
10.14*	Form of Severance Benefits Agreement (filed as Exhibit 10.4 to Active Power's Quarterly Report on Form 10-Q filed on April 27, 2010)
10.15*	Severance Benefits Agreement with James A. Clishem dated April 14, 2010 (filed as Exhibit 10.2 to Active Power's Quarterly Report on Form 10-Q filed on April 27, 2010)†
10.16*	Severance Benefits Agreement with John K. Penver dated April 14, 2010 (filed as Exhibit 10.3 to Active Power's Quarterly Report on Form 10-Q filed on April 27, 2010)†
10.17*	Active Power, Inc. 2010 Equity Incentive Plan (filed as Exhibit 10.1 to Active Power's current Report on Form 8-K filed on May 18, 2010)†
10.18*	Form of Standard Stock Option Agreement (filed as Exhibit 10.2 to Active Power's Current Report on Form 8-K filed on May 18, 2010)
10.19*	Form of Standard Restricted Stock Agreement Stock Agreement (filed as Exhibit 10.3 to Active Power's Current Report on Form 8-K filed on May 18, 2010)
10.20*	Form of Standard Restricted Stock Unit Agreement (filed as Exhibit 10.4 to Active Power's Current Report on Form 8-K filed on May 18, 2010)
10.21*	Second Amended and Restated Loan and Security Agreement with Silicon Valley Bank, dated as of August 5, 2010 (filed as Exhibit 10.1 to Active Power's Quarterly Report on Form 10-Q filed on October 27, 2010)
10.22*	Guarantee and Debenture Agreement with Silicon Valley Bank, dated as of August 5, 2010 (filed as Exhibit 10.2 to Active Power's Quarterly Report on Form 10-Q filed on October 27, 2010)
10.23	Separation Agreement and Release with James A. Clishem, dated October 14, 2011
10.24++	Professional Services Master Agreement with Hewlett-Packard Company, dated February 4, 2010

Exhibit Number	Description
10.25++	Hardware Product Purchase Agreement with Hewlett-Packard Company, dated April 30, 2010
14.1*	Active Power, Inc. Code of Business Conduct and Ethics (filed as Exhibit 14.1 to Active Power's Current Report on Form 8-K filed on November 8, 2010)
21.1	Subsidiaries of the Registrant
23.1	Consent of Grant Thornton LLP
23.2	Consent of Ernst & Young LLP
24.1	Power of Attorney, pursuant to which amendments to this Form 10-K may be filed, is included on the signature page contained in Part IV of this Form 10-K
31.1	Certification of Principal Executive Officer as required by Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Principal Financial Officer as required by Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of Principal Executive Officer as required by Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Principal Financial Officer as required by Section 906 of the Sarbanes-Oxley Act of 2002
101	The following financial statements from Active Power's Annual Report on Form 10-K for the fiscal year ended December 31, 2011, formatted in XBRL: (1) Consolidated Balance Sheets, (ii) Consolidated Statement of Operations and Comprehensive Loss, (iii) Consolidated Statement of Cash Flows, and (iv) Notes to Consolidated Financial Statements.

* Incorporated by reference to the indicated filing.

\+ Portions of this exhibit have been omitted pursuant to a confidential treatment previously granted.

++ Confidential treatment has been requested with respect to certain portions of this exhibit.

† Management contract or compensatory plan or arrangement.

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SIGNATURES

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

ACTIVE POWER, INC.

Dated: March 1, 2012

By: /s/ JAN H. LINDELOW

Chief Executive Officer and Director

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby severally constitutes and appoints, Jan H. Lindelow and John K. Penver, and each or any of them, his true and lawful attorney-in-fact and agent, each with the power of substitution and resubstitution, for him in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

Name	Title	Date
/s/ JAN H. LINDELOW **Jan H. Lindelow**	Chief Executive Officer and Director (principal executive officer)	March 1, 2012
/s/ JOHN K. PENVER **John K. Penver**	Vice President—Finance, Chief Financial Officer and Secretary (principal financial and accounting officer)	March 1, 2012
/s/ BENJAMIN L. SCOTT **Benjamin L. Scott**	Chairman of the Board, Director	March 1, 2012
/s/ AKE ALMGREN **Ake Almgren**	Director	March 1, 2012
/s/ RODNEY S. BOND **Rodney S. Bond**	Director	March 1, 2012
/s/ JAMES E. DEVENNY III **James E. deVenny III**	Director	March 1, 2012
/s/ ROBERT S. GREENBERG **Robert S. Greenberg**	Director	March 1, 2012

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Shareholders

Active Power, Inc.

We have audited Active Power, Inc.'s (a Delaware corporation) internal control over financial reporting as of December 31, 2011, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Active Power, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on Active Power, Inc.'s internal control over financial reporting based on our audit.

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

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

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

In our opinion, Active Power, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2011, based on criteria established in Internal Control-Integrated Framework issued by COSO.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheet of Active Power, Inc. as of December 31, 2011 and 2010, and the related consolidated statements of operations and comprehensive loss, stockholders' equity, and cash flows for the years then ended and our report dated March 1, 2012 expressed an unqualified opinion.

/s/ Grant Thornton LLP

Dallas, Texas
March 1, 2012

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Shareholders

Active Power, Inc.

We have audited the accompanying consolidated balance sheets of Active Power, Inc. (a Delaware corporation) as of December 31, 2011 and 2010, and the related consolidated statements of operations and comprehensive loss, stockholders' equity, and cash flows for each of the two years in the period ended December 31, 2011. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Active Power, Inc. as of December 31, 2011 and 2010, and the results of their operations and their cash flows for each of the two years in the period ended December 31, 2011, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Active Power, Inc.'s internal control over financial reporting as of December 31, 2011, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and our report dated March 1, 2012 expressed an unqualified opinion.

/s/ Grant Thornton LLP

Dallas, Texas
March 1, 2012

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Shareholders of

Active Power, Inc.

We have audited the accompanying consolidated statements of operations and comprehensive loss, stockholders' equity and cash flows of Active Power, Inc. (the Company) as of December 31, 2009. These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these consolidated financial statements based on our audit.

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated results of operations and cash flows of Active Power, Inc. for the year ended December 31, 2009, in conformity with U.S. generally accepted accounting principles.

/s/ Ernst & Young LLP

Austin, Texas
March 4, 2010

ACTIVE POWER, INC.
CONSOLIDATED BALANCE SHEETS
(In thousands)

	December 31, 2011	December 31, 2010
ASSETS		
Current assets:		
Cash and cash equivalents	$ 10,357	$ 15,416
Short-term investments in marketable securities	—	134
Restricted cash	389	—
Accounts receivable, net of allowance for doubtful accounts of $337 and $330 at December 31, 2011 and 2010, respectively	11,163	14,708
Inventories	9,439	6,430
Prepaid expenses and other	414	511
Total current assets	31,762	37,199
Property and equipment, net	2,861	2,005
Deposits and other	404	314
Total assets	$ 35,027	$ 39,518
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 4,757	$ 6,022
Accrued expenses	5,351	7,068
Deferred revenue	2,366	2,492
Revolving line of credit	5,535	2,535
Total current liabilities	18,009	18,117
Long term liabilities	726	579
Stockholders' equity:		
Preferred Stock	—	—
Common Stock—$0.001 par value; 150,000 shares authorized; 80,582 and 79,860 shares issued and 80,439 and 79,736 shares outstanding in 2011 and 2010, respectively	80	80
Treasury stock, at cost; 143 and 124 shares in 2011 and 2010, respectively	(115)	(103)
Additional paid-in capital	277,023	274,807
Accumulated deficit	(260,895)	(253,801)
Other accumulated comprehensive loss	199	(161)
Total stockholders' equity	16,292	20,822
Total liabilities and stockholders' equity	$ 35,027	$ 39,518

See accompanying notes.

ACTIVE POWER, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
AND COMPREHENSIVE LOSS
(In thousands, except per share amounts)

	Year ended December 31,		
	2011	**2010**	**2009**
Revenues:			
Product revenue	$ 62,650	$ 55,647	$ 32,837
Service and other revenue	12,832	9,308	7,474
Total revenue	75,482	64,955	40,311
Cost of goods sold:			
Cost of product revenue	47,664	40,045	25,827
Cost of service and other revenue	9,917	6,890	5,254
Total cost of goods sold	57,581	46,935	31,081
Gross profit	17,901	18,020	9,230
Operating expenses:			
Research and development	4,739	3,412	4,170
Selling and marketing	13,812	13,093	11,431
General and administrative	6,230	5,319	4,592
Total operating expenses	24,781	21,824	20,193
Operating loss	(6,880)	(3,804)	(10,963)
Interest income (expense), net	(225)	(122)	(69)
Other income (expense), net	11	(40)	(45)
Loss before income taxes	(7,094)	(3,966)	(11,077)
Income tax benefit	—	41	44
Net loss	$ (7,094)	$ (3,925)	$ (11,033)
Net loss per share, basic & diluted	$ (0.09)	$ (0.05)	$ (0.17)
Shares used in computing net loss per share, basic & diluted	80,085	77,677	63,854
Comprehensive loss:			
Net loss	$ (7,094)	$ (3,925)	$ (11,033)
Translation gain (loss) on subsidiaries in foreign currencies	360	18	502
Change in unrealized gain (loss) on investments in marketable securities	—	—	—
Comprehensive loss	$ (6,734)	$ (3,907)	$ (10,531)

See accompanying notes.

ACTIVE POWER, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands)

	Common Stock		Treasury Stock					
	Number of Shares	Par Value	Number of Shares	At Cost	Additional Paid-In Capital	Accumulated Deficit	Other Accumulated Comprehensive Loss	Total Stockholders' Equity
Balance at December 31, 2008	60,482	$ 60	61	$ (59)	$ 260,344	$ (238,843)	$ (681)	$ 20,821
Employee stock purchases	20	—	—	—	11	—	—	11
Sale of common stock, less $67 in issuance costs	6,000	6			2,927			2,933
Shares held in treasury	—	—	31	(14)	—	—		(14)
Net translation gain on foreign subsidiaries	—	—	—	—	—	—	502	502
Stock-based compensation	—	—	—	—	1,272	—	—	1,272
Net loss	—	—	—	—	—	(11,033)	—	(11,033)
Balance at December 31, 2009	66,502	$ 66	92	$ (73)	$ 264,554	$ (249,876)	$ (179)	$ 14,492
Employee stock purchases	128	1	—	—	101	—	—	102
Sale of common stock, less $886 in issuance costs	13,230	13			9,023			9,036
Shares held in treasury	—	—	32	(30)	—	—		(30)
Net translation gain on foreign subsidiaries	—	—	—	—	—	—	18	18
Stock-based compensation	—	—	—	—	1,129	—	—	1,129
Net loss	—	—	—	—	—	(3,925)	—	(3,925)
Balance at December 31, 2010	79,860	$ 80	124	$ (103)	$ 274,807	$ (253,801)	$ (161)	$ 20,822
Employee stock purchases	722	—	—	—	510	—	—	510
Shares held in treasury	—	—	19	(12)	—	—		(12)
Net translation gain on foreign subsidiaries	—	—	—	—	—	—	360	360
Stock-based compensation	—	—	—	—	1,706	—	—	1,706
Net loss	—	—	—	—	—	(7,094)	—	(7,094)
Balance at December 31, 2011	80,582	$ 80	143	$ (115)	$ 277,023	$ (260,895)	$ 199	$ 16,292

ACTIVE POWER, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year ended December 31,		
	2011	2010	2009
Operating activities			
Net loss	$ (7,094)	$ (3,925)	$ (11,033)
Adjustments to reconcile net loss to cash used in operating activities:			
Depreciation expense	1,383	1,887	1,950
Charge to allowance for doubtful accounts	9	35	91
Accretion of premium / discount on investments	—	—	2
Loss on disposal of fixed assets	154	120	395
Impairment of inventory and related assets	8	—	—
Stock-based compensation	1,706	1,131	1,272
Changes in operating assets and liabilities:			
Accounts receivable	3,536	(3,214)	(2,171)
Inventories	(3,009)	197	60
Prepaid expenses and other assets	7	(31)	75
Accounts payable	(1,265)	867	2,741
Accrued expenses	(1,717)	2,111	(468)
Deferred revenue	(126)	779	223
Long term liabilities	147	111	(53)
Net cash provided by (used in) operating activities	(6,261)	68	(6,916)
Investing activities			
Purchases of marketable securities	—	(134)	—
Sales/maturities of marketable securities	134	—	701
Purchases of property and equipment	(2,401)	(1,109)	(755)
Increase in restricted cash	(389)	—	—
Net cash (used in) provided by investing activities	(2,656)	(1,243)	(54)
Financing activities			
Proceeds from private placement of common stock	—	9,922	3,000
Issuance costs of private placement	—	(886)	(67)
Proceeds from employee stock purchases	510	102	11
Purchases of treasury stock	(12)	(30)	(14)
Proceeds from draw on revolving line of credit	3,000	1,008	559
Payments on revolving line of credit	—	(1,032)	—
Net cash provided by financing activities	3,498	9,084	3,489
Translation gain (loss) on subsidiaries in foreign currencies	360	18	502
Total change in cash and cash equivalents	(5,059)	7,927	(2,979)
Cash and cash equivalents, beginning of period	15,416	7,489	10,468
Cash and cash equivalents, end of period	$ 10,357	$ 15,416	$ 7,489
Supplemental Cash Flow Information:			
Interest paid	$ 229	$ 145	$ 104
Income tax paid	$ —	$ —	$ —

See accompanying notes.

ACTIVE POWER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2011
(in thousands, except share and per share amounts)

1. Summary of Significant Accounting Policies

Description of Business

Active Power, Inc. and its subsidiaries (hereinafter referred to as "we", "us", "Active Power" or the "Company") manufacture and provide critical power quality solutions that provide business continuity and protect customers in the event of an electrical power disturbance. Our products are designed to deliver continuous clean power, protecting customers from voltage fluctuations, such as surges and sags and frequency fluctuations, and also to provide ride-through, or temporary, power to bridge the gap between a power outage and the restoration of utility power. Our target customers are those global enterprises requiring "power insurance" because they have zero tolerance for downtime in their mission critical operations. The Uninterruptible Power Supply ("UPS") products we manufacture use kinetic energy to provide short-term power as a cleaner alternative to electro-chemical battery-based energy. We sell stand alone UPS products as well as complete continuous power and infrastructure solutions, including containerized continuous power systems that we brand as PowerHouse. We sell our products globally through direct, manufacturer's representatives, Original Equipment Manufacturer ("OEM") channels and IT partners. Our current principal markets are Europe, Middle East and Africa ("EMEA"), Asia and North America.

We were founded as a Texas Corporation in 1992 and reincorporated in Delaware in 2000 prior to our initial public offering. Our headquarters are in Austin, Texas with international offices in the UK, Germany, China and Japan.

The accompanying consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles and include the accounts of the Company and its consolidated subsidiaries. All significant intercompany transactions and balances have been eliminated upon consolidation.

The accompanying consolidated financial statements have also been prepared on the assumption that the Company will continue to operate as a going concern. Accordingly assets and liabilities are recorded on the basis that the Company will be able to realize its assets and discharge its liabilities in the normal course of business. The Company's history of operating losses and use of cash, in the absence of other factors, may cause uncertainty as to its ability to continue as a going concern. We have reviewed the current and prospective sources of liquidity, significant conditions and events and forecast financial results and concluded that we have adequate resources to continue to operate as a going concern. Our business plan and our assumptions around the adequacy of our liquidity are based on estimates regarding expected revenues and future costs. However, our revenues may not meet our projections or our costs may exceed our estimates. Further, our estimates may change and future events or developments may also affect our estimates. Any of these factors may change our expectation of cash usage in 2012 or significantly affect our level of liquidity, which may require us to seek additional financing or take other measures to reduce our operating costs in order to continue operating. These financial statements do not include any adjustments that might result from the Company not being able to continue as a going concern.

Use of Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates. Changes in the estimates or assumptions used by management could have a material impact upon reported amounts and our results of operations.

Revenue Recognition

In general, we recognize revenue when four criteria are met: (i) persuasive evidence that an arrangement exists; (ii) delivery has occurred or services have been rendered; (iii) the sales price is fixed or determinable; and (iv) collectability is reasonably assured. In general, revenue is recognized when revenue-generating transactions generally fall into one of the following categories of revenue recognition:

- We recognize product revenue at the time of shipment for substantially all products sold directly to customers and through distributors because title and risk of loss pass on delivery to the common carrier. Our customers and distributors do not have the right to return products. If title and risk of loss pass at some other point in time, we recognize such revenue for our customers when the product is delivered to the customer and title and risk of loss has passed.

- We recognize installation and service and maintenance revenue at the time the service is performed.

- We recognize revenue associated with extended maintenance agreements ("EMAs") over the life of the contracts using the straight-line method, which approximates the expected timing in which applicable services are performed. Amounts collected in advance of revenue recognition are recorded as a current or long-term liability based on the time from the balance sheet date to the future date of revenue recognition.

- We recognize revenue on certain rental programs over the life of the rental agreement using the straight-line method. Amounts collected in advance of revenue recognition are recorded as a current or long-term liability based on the time from the balance sheet date to the future date of revenue recognition.

- Shipping costs reimbursed by the customer are included in revenue.

Multiple element arrangements ("MEAs"). Arrangements to sell products to customers frequently include multiple deliverables. Our most significant MEAs include the sale of one or more of our CleanSource UPS or PowerHouse products, combined with one or more of the following products: design services, project management, commissioning and installation services, spare parts or consumables, and EMA's. Delivery of the various products or performance of services within the arrangement may or may not coincide. Certain services related to design and consulting may occur prior to delivery of product and commissioning and installation typically take place within six months of product delivery, depending upon customer requirements. EMAs, consumables, and repair, maintenance or consulting services generally are delivered over a period of one to five years. In certain arrangements revenue recognized is limited to the amount invoiced or received that is not contingent on the delivery of future products and services.

When arrangements include multiple elements, we allocate revenue to each element based on the relative selling price and recognize revenue when the elements have standalone value and the four criteria for revenue recognition have been met for each element. We establish the selling price of each element based on Vendor Specific Objective Evidence ("VSOE") if available, Third Party Evidence ("TPE") if VSOE is not available, or best estimate of selling price ("BESP") if neither VSOE nor TPE is available. We generally determine selling price based on amounts charged separately for the delivered and undelivered elements to similar customers in standalone sales of the specific elements. When arrangements include an EMA, we recognize revenue related to the EMA at the stated contractual price on a straight-line basis over the life of the agreement.

Any taxes imposed by governmental authorities on our revenue-producing transactions with customers are shown in our consolidated statements of operations on a net-basis; that is, excluded from our reported revenues.

Shipping and Handling Costs

We classify shipping and handling costs related to product sales as cost of revenue, and any payments from customers for shipping and handling are categorized in revenue. We classify shipping and handling costs associated with receiving production inventory as cost of product revenue. Any materials received or shipped which are related to our engineering, sales, marketing and administrative functions are classified as operating expenses.

Cash Equivalents

Investments with a contractual maturity of three months or less when purchased are classified as cash equivalents.

Investments in Marketable Securities

Investments in marketable securities consist of money-market funds, commercial paper and debt securities with readily determinable fair values. Active Power accounts for investments that are reasonably expected to be realized in cash, sold or consumed during the year as short-term investments. We classify investments in marketable securities as available-for-sale and all reclassifications made from unrealized gains/losses to realized gains/losses are determined based on the specific identification method. The carrying amount of investments in marketable securities approximated fair value at December 31, 2010 and we had no such investments at December 31, 2011.

In accordance with our investment policy and guidelines, our short-term investments are diversified among and limited to high quality securities with a minimum of investment grade ratings. We actively monitor our investment portfolio to ensure compliance with our investment objective to preserve capital, meet liquidity requirements and maximize return on our investments. We do not require collateral or enter into master netting arrangements to mitigate our credit risk.

The carrying value of our investments in marketable securities consists of the following at December 31, 2010

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value (Net Carrying Amount)
Money–market funds	$ 134	$ —	$ —	$ 134
	$ 134	$ —	$ —	134
Less: Short-term investments in marketable securities				134
Long-term investments in marketable securities				$ —

The fair value by contractual maturity of our marketable securities at December 31, 2010 is shown below:

Within one year	$ 134
	$ 134

Effective October 1, 2008, we adopted an accounting standard, which defines fair value, establishes a framework for measuring fair value and expands on required disclosures regarding fair value measurements. This standard applies to reported balances that are required or permitted to be measured at fair value under existing accounting pronouncements; accordingly, the standard does not require any new fair value measurements of reported balances.

Level 1—uses quoted prices in active markets for identical assets or liabilities we have the ability to access.

Level 2—uses observable inputs other than quoted prices in Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.

Level 3—uses one or more significant inputs that are unobservable and supported by little or no market activity, and that reflect the use of significant management judgment

Inputs are referred to as assumptions that market participants would use in pricing the asset or liability. The uses of inputs in the valuation process are categorized into a three-level fair value hierarchy.

Our Level 1 assets and liabilities consist of cash equivalents, which are primarily invested in money market funds. These assets are classified as Level 1 because they are valued using quoted prices and other relevant information generated by market transactions involving identical assets and liabilities.

The fair value of our cash equivalents, are primarily invested in money market funds, was determined using the following inputs as of December 31, (in thousands):

2011	Fair Value Measurements at Reporting Date Using			
	Level 1	Level 2	Level 3	Total
Money-market funds	$ 3,093	$ —	$ —	$ 3,093
Total	$ 3,093	$ —	$ —	$ 3,093
Amounts included in:				
Cash and cash equivalents	$ 3,093	$ —	$ —	$ 3,093
Short-term investments	—	—	—	—
Total	$ 3,093	$ —	$ —	$ 3,093

2010	Fair Value Measurements at Reporting Date Using			
	Level 1	Level 2	Level 3	Total
Money-market funds	$ 3,227	$ —	$ —	$ 3,227
Total	$ 3,227	$ —	$ —	$ 3,227
Amounts included in:				
Cash and cash equivalents	$ 3,093	$ —	$ —	$ 3,093
Short-term investments	134	—	—	134
Total	$ 3,227	$ —	$ —	$ 3,227

For cash and cash equivalents, marketable securities, accounts receivable, and accounts payable, the carrying amount approximates fair value because of the relative short maturity of those instruments.

Allowance for Doubtful Accounts

We estimate an allowance for doubtful accounts based on factors related to the credit risk of each customer. Historically, credit losses were minimal, primarily because the majority of our revenues were generated from large OEM customers, primarily Caterpillar, Inc. ("Caterpillar"). As we began integrating additional distribution channels into our business and selling more of our products directly to customers, our risk of credit losses has increased. We perform credit evaluations of new customers and often require deposits, prepayments or use of bank instruments such as trade letters of credit or documentary collection to mitigate our credit risk. Allowance for doubtful account balances are $337 and $330 as of December 31, 2011 and 2010, respectively. Although we have fully provided for these balances, we continue to pursue collection of these receivables.

The following table summarizes the annual changes in our allowance for doubtful accounts:

Balance at December 31, 2008	$	413
Additions charged to expense		91
Write-off of uncollectible accounts		(151)
Balance at December 31, 2009	$	353
Additions charged to expense		35
Recovery of amount previously reserved		(39)
Write-off of uncollectible accounts		(19)
Balance at December 31, 2010	$	330
Additions charged to expense		9
Write-off of uncollectible accounts		(2)
Balance at December 31, 2011	$	337

Inventories

Inventories are stated at the lower of cost or market, using the first-in-first-out method, and consist of the following at December 31:

		2011		2010
Raw materials	$	6,493	$	5,243
Work in process		3,085		2,382
Finished goods		1,680		1,148
Less inventory reserves		(1,819)		(2,343)
	$	9,439	$	6,430

Property and Equipment

Property and equipment is stated at cost and is depreciated using the straight-line method over the estimated useful lives of the assets, as follows (in years):

Equipment	2 – 10
Demonstration units	3 – 5
Computers and purchased software	2 – 3
Furniture and fixtures	2 – 5

Leasehold improvements are depreciated over the shorter of the life of the improvement or the remainder of the property lease term, including renewal options. Repairs and maintenance is expensed as incurred.

Long-Lived Assets

Long-lived assets held and used by the Company are reviewed for impairment whenever events or changes in circumstances indicate that their net book value may not be recoverable. When such factors and circumstances exist, we compare the projected undiscounted future cash flows associated with the related asset or group of assets over their estimated useful lives against their respective carrying amounts. Impairment, if any, is based on the excess of the carrying amount over the fair value of those assets and is recorded in the period in which the determination was made.

Patent Application Costs

We have not capitalized patent application fees and related costs because of uncertainties regarding net realizable value of the technology represented by the existing patent applications and ultimate recoverability. All patent costs have been expensed through December 31, 2011.

Accrued Expenses

Accrued expenses consist of the following at December 31:

	2011	2010
Compensation and benefits	$ 3,037	$ 3,985
Warranty liability	583	677
Property, income, state, sales and franchise tax	529	1,193
Professional fees	463	360
Other	739	853
	$ 5,351	$ 7,068

Warranty Liability

Generally, the warranty period for our power quality products is 12 months from the date of commissioning or 18 months from the date of shipment from Active Power, whichever period is shorter. Occasionally we offer longer warranty periods to certain customers. The warranty period for products sold to our OEM customer, Caterpillar, is 12 months from the date of shipment to the end-user, or up to 36 months from shipment. This is dependent upon Caterpillar complying with our storage requirements for our products in order to preserve this warranty period beyond the standard 18-month limit. We provide for the estimated cost of product warranties at the time revenue is recognized and this accrual is included in accrued expenses and long term liabilities on the accompanying consolidated balance sheet.

Changes in the Company's warranty liability are as follows:

Balance at December 31, 2008	$ 948
Warranty expense	459
Warranty charges incurred	(744)
Balance at December 31, 2009	$ 663
Warranty expense	830
Warranty charges incurred	(759)
Balance at December 31, 2010	$ 734
Warranty expense	742
Warranty charges incurred	(863)
Balance at December 31, 2011	$ 613
Warrant liability included in accrued expenses	$ 583
Long term warranty liability	30
Balance at December 31, 2011	$ 613

Long-Term Liabilities

Long term liabilities consist of the following at December 31:

	2011	2010
Deferred revenue	$ 521	$ 347
Technology licensing agreement	150	150
Warranty liability	30	57
Sublease deposits	25	25
	$ 726	$ 579

Stock-Based Compensation Expense

Total stock-based compensation expense relating to our stock plans in the twelve-month period ended December 31, 2011, 2010 and 2009 was $1.7 million and $1.1 million and $1.3 million, respectively. Included in our 2011 expense were costs of approximately $181 of additional stock-based compensation expense associated with the termination of our Chief Executive Officer. Details of our stock-based compensation include the following:

	Year Ended December 31,		
	2011	2010	2009
Stock-based compensation expense by caption:			
Cost of product revenue	$ 199	$ 146	$ 169
Cost of service and other revenue	79	43	46
Research and development	166	80	171
Selling and marketing	455	304	313
General and administrative	807	558	573
	$ 1,706	$ 1,131	$ 1,272
Stock-based compensation expense by type of award:			
Stock options	$ 1,707	$ 1,147	$ 1,104
Restricted stock awards	(1)	(16)	168
	$ 1,706	$ 1,131	$ 1,272

Stock-based compensation expense of $- and $1 was capitalized and remained in inventory at December 31, 2011 and 2010, respectively.

We account for our stock-based compensation using a fair-value based recognition method. Stock-based compensation cost is estimated at the grant date based on the fair-value of the award and is recognized as expense ratably over the requisite service period of the award. Determining the appropriate fair-value model and calculating the fair value of stock-based awards at the grant date requires considerable judgment, including estimating stock price volatility, expected option life and forfeiture rates. We develop our estimates based on historical data and market information that can change significantly over time. A small change in the estimates used can have a relatively large change in the estimated valuation.

We use the Black-Scholes option valuation model to value employee stock awards. We estimate stock price volatility based upon our historical volatility. Estimated option life and forfeiture rate assumptions are derived from historical data. For stock-based compensation awards with graded vesting, we recognize compensation expense using the straight-line amortization method.

Income Taxes

We account for income taxes using the liability method of accounting for income taxes. Under the liability method, deferred taxes are determined based on the differences between the financial statement and tax basis of assets and liabilities using enacted tax rates in effect in the years in which the differences are expected to reverse. A valuation allowance is recorded to reduce the carrying amounts of deferred tax assets if it is more likely than not that such assets will not be realized.

As a result of our adoption of an accounting standard in January 2007, we recognize and measure benefits for uncertain tax positions which requires significant judgment from management. We evaluate our uncertain tax positions on a quarterly basis and base these evaluations upon a number of factors, including changes in facts or circumstances, changes in tax law, correspondence with tax authorities during the course of audits and effective settlement of audit issues. Changes in the recognition or measurement of uncertain tax positions could result in material increases or decreases in our income tax expense in the period in which we make the change, which could have a material impact on our effective tax rate and operating results. At December 31, 2011 and 2010, the Company had no material unrecognized tax benefits.

Segment Reporting

Active Power's chief operating decision maker allocates resources and assesses the performance of its power management product development and sales activities as one segment.

Fair Value of Financial Instruments

Our financial instruments consist principally of cash and cash equivalents, investments, accounts receivable, accounts payable and our revolving line of credit. We believe all of these financial instruments are recorded at amounts that approximate their current market values.

Concentration of Credit Risk

Financial instruments which potentially subject Active Power to concentrations of credit risk consist of cash and cash equivalents, investments and accounts receivable. Active Power's cash and cash equivalents and investments are placed with high credit quality financial institutions and issuers. On November 19, 2010, the Federal Deposit Insurance Corporation ("FDIC") issued a Final Rule implementing section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act that provides for unlimited insurance coverage of noninterest-bearing transaction accounts beginning December 31, 2010 through December 31, 2012. Active Power performs limited credit evaluations of its customers' financial condition prior to entering into commercial transactions. We generally require letters of credit or prepayments from higher-risk customers as deemed necessary to ensure collection. Our allowance for doubtful accounts is estimated based on factors related to the credit risk of each customer. Individual receivables are written off after they have been deemed uncollectible. We also purchase several components from sole source or limited source suppliers.

Economic Dependence

We are significantly dependent on our relationships with Hewlett Packard Corporation ("Hewlett Packard") and Caterpillar, Inc. ("Caterpillar"). If these relationships are unsuccessful or discontinue, our business and revenue may suffer. The loss of or a significant reduction in orders from Hewlett Packard or Caterpillar, or the failure to provide adequate service and support to the end-users of our products by Hewlett Packard or Caterpillar, could significantly reduce our revenue. Our operating results in the foreseeable future will continue to depend on the sales made by a relatively small number of customers, including Hewlett Packard and Caterpillar.

The following customers accounted for a significant percentage of Active Power's total revenue during each of the years ended December 31:

	2011	2010	2009
Caterpillar	15%	19%	24%
Hewlett Packard	36%	25%	12%
United States based IT Customer	—%	16%	8%

No other customer represented more than 10% of our revenues in any of the years reported. Hewlett Packard represented 42% and 34% of our outstanding receivables at December 31, 2011 and 2010, respectively. Caterpillar represented 10%, and 14% of our outstanding accounts receivable at December 31, 2011 and 2010, respectively. One European based customer accounted for 20% of our outstanding accounts receivable at December 31, 2011 and one other US based IT customer accounted for 19% of our outstanding accounts receivable at December 31, 2010. No other customer represented more than 10% of our accounts receivable at December 31, 2011 and 2010.

Advertising Costs

We expense advertising costs as incurred. These expenses were approximately $90, $8 and $33 in 2011, 2010 and 2009, respectively.

Net Loss Per Share

The following table sets forth the computation of basic and diluted net loss per share for the years ended December 31:

	2011	2010	2009
Net loss	$ (7,094)	$ (3,925)	$ (11,033)
Basic and diluted:			
Weighted-average shares of common stock outstanding used in computing basic and diluted net loss per share	80,085	77,677	63,854
Basic and diluted net loss per share	$ (0.09)	$ (0.05)	$ (0.17)

The calculation of diluted loss per share excludes 9,718,241, 9,389,987 and 5,639,442 shares of common stock issuable upon exercise of employee stock options as of December 31, 2011, 2010 and 2009, respectively, and 19,001 and 116,345 non-vested shares of common stock issuable upon exercise of restricted stock awards as of December 31, 2010 and 2009, respectively, because their inclusion in the calculation would be anti-dilutive.

Recent Accounting Pronouncements

On January 1, 2010, we adopted amendments to authoritative literature that modifies the revenue recognition guidance for establishing separate units of accounting in a multiple element arrangement and requires the allocation of arrangement consideration to each deliverable in the arrangement based on relative selling price of the elements. The selling price for each deliverable is based on vendor-specific objective evidence ("VSOE") if available, third-party evidence ("TPE") if VSOE is not available, or best estimate of selling price ("BESP") if neither VSOE nor TPE is available. BESP must be determined in a manner that is consistent with that used to determine the price to sell the specific elements on a standalone basis. The authoritative literature permitted prospective or retrospective adoption, and we elected prospective adoption. Other than the increased disclosure requirements of adoption of this policy, the adoption of these amendments did not change our units of accounting, allocation of arrangement consideration, or pattern or timing of revenue recognition. It also did not have a significant impact on our financial position, results of operations, or cash flows for the year ended December 31, 2010. See Note 1 for additional discussion of the Company's revenue recognition policy.

2. Property and Equipment

Property and equipment consists of the following at December 31:

	2011	2010
Equipment	$ 9,980	$ 9,574
Demonstration units	1,345	1,195
Computers and purchased software	4,029	3,425
Furniture and fixtures	369	362
Leasehold improvements	7,425	7,328
Construction in progress	1,107	389
	24,255	22,273
Accumulated depreciation	(21,394)	(20,268)
	$ 2,861	$ 2,005

3. Stockholders' Equity

Preferred Stock

At December 31, 2011, Active Power had 10,420,000 shares of preferred stock authorized and no shares outstanding.

Common Stock

Common stock reserved for future issuance at December 31, 2011 consists of 12,182,819 shares of common stock reserved under our 2010 Stock Incentive Plan, of which 9,718,241 were subject to outstanding options and restricted shares and 2,364,578 were available for future grants of awards. Options are subject to terms and conditions as determined by our Board of Directors.

In November 2009, we filed a registration statement with the Securities and Exchange Commission, using a "shelf" registration process. Under this shelf process, we may, from time to time, sell any combination of the securities described in this prospectus in one or more offerings up to a total dollar amount of $25,000,000. This filing became effective December 21, 2009.

In February 2010, we sold approximately 13.25 million shares of common stock at a purchase price of $0.75 per share, for proceeds, net of fees and expenses, of approximately $9.0 million, in a firm-commitment underwritten offering made under a shelf registration statement that we had filed with the Securities and Exchange Commission and that had been declared effective in December 2009. The proceeds from this offering were designed to strengthen our balance sheet and for general corporate purposes.

Stock Option Plan

Since its inception, we have authorized 19,911,478 shares of common stock for issuance under our 2000 and 2010 Stock Incentive Plans. We grant options under these plans that vest over periods ranging from immediate to four years. The term of each option is no more than ten years from the date of grant. We have repurchase rights for any unvested shares purchased by optionees that allow us to repurchase such shares at cost.

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A summary of common stock option activity is as follows:

	Number of Shares	Weighted-Average Exercise Price	Weighted-Average Contractual Life (in years)
Outstanding at December 31, 2008	5,703,721	$ 3.66	
Granted	2,432,474	0.59	
Exercised	(20,312)	0.56	
Canceled	(2,476,441)	4.53	
Outstanding at December 31, 2009	5,639,442	$ 1.97	
Granted	4,454,650	0.84	
Exercised	(128,175)	0.79	
Canceled	(575,930)	1.59	
Outstanding at December 31, 2010	9,389,987	$ 1.47	
Granted	2,521,000	1.95	
Exercised	(721,525)	0.71	
Canceled	(1,471,221)	1.55	
Outstanding at December 31, 2011	9,718,241	$ 1.64	7.00
Vested and expected to vest at December 31, 2011	9,718,241	$ 1.64	0.49
Exercisable at December 31, 2011	5,855,023	$ 1.79	5.93

The following is a summary of options outstanding and exercisable as of December 31, 2011:

	Options Outstanding			Options Exercisable	
Range of Exercise Prices	Number Outstanding	Average Remaining Contractual Life (in years)	Weighted-Average Exercise Price	Number Exercisable	Weighted-Average Exercise Price
$ 0.41 – $ 0.75	1,814,999	6.61	$ 0.59	1,052,246	$ 0.58
$ 0.76 – $0.76	35,250	6.58	0.76	28,173	0.76
$ 0.79 – $ 0.79	2,484,813	8.15	0.79	1,443,253	0.79
$ 0.81 – $ 1.88	1,939,420	7.06	1.48	1,356,528	1.53
$ 2.08 – $2.44	1,808,850	8.36	2.29	492,727	2.28
$ 2.52 – $5.17	1,634,909	4.09	3.60	1,482,096	3.71
	9,718,241	7.00	$ 1.64	5,855,023	$ 1.79

The weighted average grant date fair value of options granted during 2011, 2010 and 2009 was $1.95, $0.57 and $0.59, respectively. The total intrinsic value of options exercised (which is the amount by which the stock price exceeded the exercise price of the options at the date of exercise) during the years ended December 31, 2011, 2010 and 2009, was $553, $118 and $4, respectively. The aggregate intrinsic value of options outstanding at December 31, 2011, 2010 and 2009, was $171, $11,700 and $0, respectively. During the year ended December 31, 2011, the amount of cash received from the exercise of options was $510.

Restricted (non-vested) Shares

In 2007 and 2008 we issued 310,000 and 72,000 restricted shares to officers and employees of the Company. The restrictions lapse as the shares vest in equal annual installments over a three year period from the date of issuance. No restricted shares were granted in 2010 or 2011 by the Company. We recorded stock compensation expense of $(1), $(16) and $168 related to restricted shares in 2011, 2010 and 2009, respectively. A summary of our restricted, or non-vested, shares as of December 31, 2011, and changes during the year ended December 31, 2011 is as follows:

	Number of Shares	Weighted-Average Grant Date Fair Value
Outstanding at December 31, 2010	19,001	$ 1.00
Granted	-	-
Vested	(19,001)	1.00
Canceled	-	-
Outstanding at December 31, 2011	-	$ -

As of December 31, 2011there was $3.8 million of total unrecognized compensation cost, related to non-vested stock options, that is expected to be recognized over a weighted-average vesting period of 1.2 years.

Stock options exercisable but not subject to repurchase (vested) as of December 31, 2011, 2010 and 2009 were 5,855,023, 3,801,505 and 2,579,162, respectively. Unvested options outstanding at December 31, 2011, 2010 and 2009 were 3,863,218, 5,588,482 and 3,060,280, respectively.

During the year ended December 31, 2010, we issued 2,280,000 performance-based options to executive officers of the Company. These options provided for vesting only in the event that the Company met certain 2010 EBITDA targets. Based on our 2010 results, we recorded compensation expense of $360 during 2010 and determined that 1,575,000 of these options would vest. To the extent earned, the performance shares vest 50% on the first anniversary of the grant date, 25% on the second anniversary of the grant date and the remaining 25% on the third anniversary of the grant date so long as the officer remains a service provider to the Company. As of December 31, 2011, 1,575,000 of the performance based options were outstanding. 525,000 options were returned to the option pool in 2011 due to all of the performance targets not being met.

The fair value of each option award is estimated on the date of grant using the Black-Scholes model. Expected volatilities are based on implied and historical volatilities. The expected life of options granted is based on historical experience and on the terms and conditions of the options. The risk-free rates are based on the U.S. Treasury yield in effect at the time of grant. Assumptions used in the Black-Scholes model for our stock plans are presented below:

	2011	2010	2009
Weighted average expected life in years	6.22 years	6.35 years	6.43 years
Weighted expected volatility	76%	74%	73%
Weighted average risk-free interest rate	1.59%	1.79%	2.28%
Average expected forfeitures	15.25%	16.3%	16.5%

The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options and requires the input of subjective assumptions, including the expected stock price volatility and estimated option life. For purposes of this valuation model, no dividends have been assumed. Our options have no vesting restrictions and are fully transferable. Our policy is to issue new shares when we are required to issue shares upon share option exercises. We reserve fully for share options at the time of issuance. All options granted since 2007 are exercisable only when vested, so that we do not have to repurchase unvested shares from employees, directors or other option recipients.

4. Income Taxes

The components of the provision (benefit) for income taxes attributable to continuing operations are as follows:

	2011	2010
Current:		
Federal	$ -	$ (41)
State	12	-
Foreign	-	-
Total current	12	(41)
Deferred:		
Federal	—	—
State	—	—
Foreign	—	—
Total deferred	—	—
	$ 12	$ (41)

As of December 31, 2011, the Company had federal net operating loss carryforwards of approximately $210.0 million and research and development credit carryforwards of approximately $3.3 million. The net operating loss and credit carryforwards will expire beginning in 2012, if not utilized. Utilization of the net operating losses and credit carryforwards may be subject to a substantial annual limitation due to the "change of ownership" provisions of the Internal Revenue Code of 1986. The annual limitation may result in the expiration of net operating losses and credit carryforwards before utilization.

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred taxes as of December 31 are as follows (in thousands):

	2011	2010
Deferred tax assets:		
Current deferred tax assets		
Reserves and allowances	1,469	1,467
Deferred revenue	182	176
Valuation allowance for current deferred tax assets	(1,649)	(1,641)
Net current deferred tax assets	2	2
Noncurrent deferred tax assets		
Acquired technology	924	1,031
Capital expenses	1,964	2,185
Stock compensation	558	786
Net operating loss and tax credit carryforwards	82,193	80,164
Valuation allowance for noncurrent deferred tax assets	(85,553)	(84,069)
Net noncurrent deferred tax assets	86	97
Deferred tax liabilities:		
Current deferred tax liabilities		
Prepaid expenses	(88)	(99)
Total current deferred tax liabilities	(88)	(99)
Noncurrent deferred tax liabilities		
Unrealized gains/losses	—	—
Total noncurrent deferred tax liabilities	—	—
Net current deferred tax asset (liability)	(86)	(97)
Net noncurrent deferred tax asset (liability)	86	97
Net deferred taxes	—	—

The Company has established a valuation allowance equal to the net deferred tax asset due to uncertainties regarding the realization of deferred tax assets based on the Company's lack of earnings history. The valuation allowance increased by approximately $1.5 million during 2011. Approximately $6.3 million of the total valuation allowance relates to tax benefits for stock option deductions included in the net operating loss carryforward, which when realized, will be allocated directly to contributed capital to the extent the benefits exceed amounts attributable to deferred compensation expense.

The Company's provision for income taxes differs from the expected tax expense (benefit) amount computed by applying the statutory federal income tax rate of 34% to income before taxes due to the following:

	Year Ended December 31,		
	2011	2010	2009
Federal statutory rate	(34.0)%	(34.0)%	(34.0)%
State taxes, net of federal benefit	1.8	0.3	(0.9)
R&D credits	(1.2)	(3.1)	(0.7)
Stock compensation	10.0	5.7	2.8
Effect of foreign operations	2.5	(0.3)	3.6
Permanent items and other	0.1	5.9	2.6
Change in valuation allowance	21.0	24.4	26.2
	0.2%	(1.1)%	(0.4)%

The Company recognized no material adjustment in the liability for unrecognized income tax benefits. The reconciliation of the Company's unrecognized tax benefits at the beginning and end of the year is as follows:

Balance at January 1, 2011	$ 1,113
Additions based on tax positions related to the current year	334
Additions for tax positions of prior years	—
Reductions for tax positions of prior years	—
Settlements	—
Balance at December 31, 2011	$ 1,447

Due to the existence of the valuation allowance, future changes in our unrecognized tax benefits will not impact the Company's effective tax rate. The Company's assessment of its unrecognized tax benefits is subject to change as a function of the Company's financial statement audit.

The Company recognizes interest and penalties related to uncertain tax positions in income tax expense. As of December 31, 2011, the Company had no accrued interest or penalties related to uncertain tax positions.

The tax years 2007 through 2011 remain open to examination by the major taxing jurisdictions to which the Company is subject.

5. Commitments

We lease our office and manufacturing and engineering facilities and our foreign sales offices under operating lease agreements. These facilities' leases are non-cancelable and obligate us to pay taxes and maintenance costs. Our corporate headquarters facility is a 127,000 square foot building that we lease pursuant to a lease agreement that expires in December 2016. Our administrative, information systems, manufacturing, sales and service groups currently utilize 96,000 square feet of this facility. We sublease the remaining 31,000 square feet of our corporate headquarters facility pursuant to sublease agreements that we entered into during 2007. The sublease agreements expired December 2011. Rent expense was offset by $320, $333 and $319 in 2011, 2010 and 2009, respectively, for cash received pursuant to these sublease agreements. Our administration, marketing and engineering facility of approximately 19,600 square feet is leased pursuant to a lease agreement that expires in March 2012. In July 2011, we leased an additional 26,195 square feet in a facility adjacent to our headquarters facility, in order to expand our manufacturing facility. This lease expires in July 2014.

In addition, we lease certain equipment such as copiers and phone systems under non-cancelable leases. Net rent expense was $1.3 million, $1.2 million and $1.1 million for the years ended December 31, 2011, 2010 and 2009, respectively.

Future minimum payments and receipts under these leases at December 31, 2011 are as follows:

	Rental payments
2012	$ 1,294
2013	1,229
2014	1,083
2015	1,029
2016	1,033
2017 and thereafter	563
Total future minimum lease payments	$ 6,231

We enter into certain commitments to purchase inventory and other items in the course of normal operations. At December 31, 2011, the total of these commitments is $7,612, of which $7,487 will mature in 2012 and $25 will mature in each subsequent year through 2017.

We have entered into Severance Benefits Agreements with our Chief Financial Officer and with each of our other executive officers. These agreements generally provide that, if within 12 months following a change in control the executive officer's employment is terminated for reasons other than for cause (as defined in the agreement) or by the executive for good reason, including a significant reduction in the role and/or responsibility of the executive within 12 months of the change in corporate control, then all outstanding stock options or restricted shares held by the executive would vest as of the date of the termination and certain severance payments would be payable. In the case of our Chief Financial Officer, in the event of termination by the Company for reasons other than for cause or by him for good reason, he would be entitled to a severance payment equal to nine months of salary and be entitled to receive health benefits for nine additional months after termination. In the case of our other executive officers, in the event of a termination by the Company for reasons other than for cause or by the officer for good reason, they would be entitled to a severance payment equivalent to six months of salary and be entitled to receive health benefits for six additional months after termination.

6. Employee Benefit Plan

We maintain a 401(k) Plan that covers substantially all full-time employees. Company contributions to the plan are determined at the discretion of the Board of Directors and vest ratably over five years of service starting after the first year of employment. We did not contribute to this plan in 2011, 2010 or 2009.

7. Geographic Information

Revenues for the year ended December 31 were as follows:

	2011	2010	2009
North America	$ 48,653	$ 47,530	$ 28,707
EMEA	19,060	13,007	9,181
Asia Pacific	7,769	4,418	2,423
Total	$ 75,482	$ 64,955	$ 40,311

Revenues from foreign countries above represent shipments to customers located in thirty-three countries during 2011. Substantially all of our property, plant and equipment is located in the United States. Net assets of operations in foreign countries (excluding intercompany receivables and payables eliminated in consolidation) was $7.6 million at December 31, 2011.

8. Guarantees

In certain geographical regions, particularly Europe and Africa, we are sometimes required to issue performance guarantees to our customers as a condition of sale. These guarantees usually provide financial protection to our customers in the event that we fail to fulfill our delivery or warranty obligations. We secure these guarantees with standby letters of credit through our bank. At December 31, 2011 and, 2010 we had $446 and $547, respectively, of performance guarantees outstanding to customers that were secured with letters of credit.

9. Revolving Credit Facility

In August 2010, we entered into a Second Amended and Restated Loan and Security Agreement (the “Loan Agreement” with our existing bank, Silicon Valley Bank (“SVB”). This facility increased the total liquidity available from $6.0 million to $12.5 million subject to certain borrowing bases. This new facility expanded our ability to borrow funds from U.S. receivables to also include qualifying receivables from our UK operations, as well, increased our ability to use inventory as collateral, and also added an ability to borrow against purchase orders. These additional bases of borrowing were designed to allow us to use the credit facility to fund inventory purchases in the event we received large or multiple sales orders that would require a major investment in inventory and work in progress, to help fund continued growth in our business, and to manage our working capital requirements.

This new two-year loan facility provides for a secured revolving line of credit in an aggregate amount of up to eighty percent (80%) of the facility amount of $15.625 million, or $12.5 million, subject to certain borrowing bases. In the event we have maintained cash and cash equivalents of at least $6.25 million with SVB for at least 30 consecutive days, which is referred to as being in a “Streamline Period”, the borrowing base formula is based on eligible accounts receivable, eligible purchase orders and eligible inventory, subject to a sublimit of $5 million for U.K. accounts receivable, $3.5 million for inventory and $1.5 million for purchase orders. When we are not in a Streamline Period, our borrowings are limited based on accounts receivable and purchase orders that SVB has specifically agreed to finance and a borrowing base for eligible inventory. We may also request that SVB issue letters of credit on our behalf, of up to $1.5 million, as a portion of our total loan facility.

On August 5, 2010, we borrowed approximately $2.5 million in revolving loans, all of which was used to refinance all indebtedness owing from us to SVB under our previous credit facility. The new credit facility increases the total credit available from our previous loan facility with SVB, which was $6.0 million, and enables us to borrow against eligible inventory, foreign receivables and customer purchase orders in addition to eligible accounts receivable.

At December 31, 2011 and 2010, $5.5 and $2.5 million, respectively, was outstanding on these borrowings, at an interest rate of 5.50%. Based on the borrowing base formula, we had an additional $1.9 million available for use at December 31, 2011 under this credit facility.

When a Streamline Period is in effect, each advance based upon accounts receivable and inventory accrues interest at a per annum rate equal to SVB’s prime rate, subject to a minimum prime rate of four percent (4.00%), plus one and one-half percent (1.50%) and each advance based upon a purchase order inventory accrues interest at a per annum rate equal to SVB’s prime rate, subject to a minimum prime rate of four percent (4.00%), plus two percent (2.00%). When a Streamline Period is not in effect, each advance based upon accounts receivable and inventory accrues interest at a per annum rate equal to SVB’s prime rate, subject to a minimum prime rate of four percent (4.00%), plus three and five-eighths percent (3.625%) and each advance based upon a purchase order accrues interest at a per annum rate equal to SVB’s prime rate, subject to a minimum prime rate of four percent (4.00%), plus six and one-half percent (6.50).

Finance charges and interest are payable monthly, and all principal and interest is due on the maturity date of August 5, 2012. However, when we are not in a Streamline Period, we must repay advances based on receivables when we receive payment on the receivable that has been financed, and we must repay advances based on purchase orders within 120 days of the date of the purchase order, together with all finance charges on such advances.

The revolving loans made to us under this loan facility will be secured by a lien on substantially all of our assets. In addition, on August 5, 2010, Active Power Solutions Limited, a wholly-owned United Kingdom subsidiary of the Company, entered into a Guarantee and Debenture with SVB (the “Guarantee and Debenture”), pursuant to which Active Power Solutions Limited guarantied all of the obligations of the Company under the Loan Agreement and secured its obligations under the Guarantee and Debenture with a security interest on substantially all of its assets.

The Loan Agreement includes customary affirmative covenants for a credit facility of this size and type, including delivery of financial statements, compliance with laws, maintenance of insurance and protection of intellectual property rights. Further, the Loan Agreement contains customary negative covenants for a credit facility of this size and type, including covenants that limit or restrict our ability to, among other things, dispose of assets, change our business, change our CEO or CFO without replacing such person within 120 days, have a change in control, make acquisitions, be acquired, incur indebtedness, grant liens, make investments, make distributions, repurchase stock, and enter into certain transactions with affiliates. The Loan Agreement also requires the Company to maintain a minimum liquidity ratio of 1.25:1. The liquidity ratio is defined as the ratio of unrestricted cash and cash equivalents and marketable securities plus eligible accounts receivable to all indebtedness owed by the Company to SVB. The Company is currently in compliance with all loan covenants under the Loan Agreement.

The Loan Agreement contains customary events of default that include, among other things, non-payment defaults, covenant defaults, material adverse change defaults, insolvency defaults, material judgment defaults and inaccuracy of representations and warranty defaults. The occurrence of an event of default could result in the acceleration of obligations under the Loan Agreement, in which case the Company must repay all loans and related charges, fees and amounts then due and payable, and our subsidiary may be required to pay any such amounts under the Guarantee and Debenture. At the election of SVB, upon the occurrence and during the continuance of an event of default, finance charges or interest rates, as applicable, will increase an additional five percentage points (5.00%) per annum above the rate that is otherwise applicable thereto upon the occurrence of such event of default, and the collateral handling fees will increase by one-half percent (0.50%).

10. Selected Quarterly Consolidated Financial Data (*unaudited*)

The following tables present selected unaudited consolidated statement of operations information for each of the quarters in the years ended December 31, 2011 and 2010 (in thousands, except per share data):

	For the Quarter Ended			
Year Ended December 31, 2011	**December 31**	**September 30**	**June 30**	**March 31**
Selected consolidated statement of operations information:				
Total revenue	$ 18,330	$ 20,608	$ 19,215	$ 17,329
Total cost of goods sold	14,619	15,761	14,582	12,619
Gross profit	3,711	4,847	4,633	4,710
Operating expenses	7,022	6,079	5,921	5,759
Operating profit (loss)	(3,311)	(1,232)	(1,288)	(1,049)
Net income (loss)	(3,342)	(1,292)	(1,394)	(1,066)
Basic and diluted net income (loss) per share	$ (0.04)	$ (0.02)	$ (0.02)	$ (0.01)
Selected consolidated balance sheet information:				
Current assets	31,762	37,815	41,359	37,551
Total assets	35,027	41,226	44,352	39,868
Current liabilities	18,009	21,515	23,703	18,689
Working capital	13,753	16,300	17,656	18,862
Long term obligations	726	811	712	660
Stockholders’ equity	16,292	18,900	19,937	20,519

	For the Quarter Ended			
Year Ended December 31, 2010	**December 31**	**September 30**	**June 30**	**March 31**
Selected consolidated statement of operations information:				
Total revenue	$ 19,335	$ 18,456	$ 16,047	$ 11,117
Total cost of goods sold	14,006	12,978	11,685	8,266
Gross profit	5,329	5,478	4,362	2,851
Operating expenses	5,159	5,447	5,808	5,410
Operating loss	170	31	(1,446)	(2,559)
Net loss	145	55	(1,536)	(2,589)
Basic and diluted loss per share	$ 0.00	$ 0.00	$ (0.02)	$ (0.04)
Selected consolidated balance sheet information:				
Current assets	37,199	34,050	33,796	31,192
Total assets	39,518	36,389	36,396	34,029
Current liabilities	18,117	15,626	16,234	12,420
Working capital	19,082	18,424	17,562	18,772
Long term obligations	579	606	629	691
Stockholders’ equity	20,822	20,157	19,533	20,918

Exhibit 10.24

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PROFESSIONAL RELATED SERVICES MASTER AGREEMENT
Agreement # CW196597

Template Revision Date: 2-Mar-

PROFESSIONAL SERVICES MASTER AGREEMENT

This Professional Services Master Agreement (the "***Agreement***") is made and entered into on __ January 2010 ("***Effective Date***") by and between Hewlett-Packard Company, a Delaware corporation, having a principal place of business at 3000 Hanover Street, Palo Alto, California, 94304-1112 and Active Power, Inc. a Delaware corporation having a principal place of business at 2128 West Braker Lane, BK 12, Austin, Texas 78758 ("***Supplier***").

1. Nature of Agreement

1.1 Scope. This Agreement sets forth the terms and conditions under which Supplier shall perform Services and provide Deliverables. Services and Deliverables will typically be provided as part of an HP Project for a Customer. A SOW will be agreed to for each Project. Except as otherwise stated in this Agreement, the parties intend, and hereby agree, that any such SOW shall be governed by this Agreement, as though the provisions of this Agreement were set forth in their entirety within such SOW, and so that each SOW and this Agreement shall be considered one, fully integrated document and agreement.

1.2 Eligible Purchasers. This Agreement enables Hewlett-Packard Company, its Subsidiaries and Affiliates worldwide ("***Eligible Purchasers***") to purchase Products and Services from Supplier and Supplier Subsidiaries and Affiliates. Additionally, non- U.S. purchases of Products and Services may be made under a mutually agreed-upon and separately executed Local Implementation Agreement ("***LIA***"). Such LIA will address local law, custom or circumstances. For all purchases of Products and Services, Eligible Purchasers will effect purchases by signing a SOW with Supplier, and then issuing a Purchase Order that will be governed by this Agreement and, for non-U.S. purchases, by this Agreement and the LIA. Hewlett-Packard Company is not responsible or otherwise liable for any LIA or Purchase Order issued under this Agreement by an HP Subsidiary or HP Affiliate unless Hewlett-Packard Company has signed said LIA or Purchase Order and is a party to same. Supplier may impose its typical creditworthiness standards with respect to any sale on credit to an Eligible Purchaser, and if such standards are not met, to require prepayment.

1.3 Term of Agreement. Unless terminated earlier as provided for in this Agreement, this Agreement will have a term of three (3) years from the Effective Date set forth above. HP shall have the option of renewing this Agreement for successive one (1) year terms, subject to HP providing notice no later than 30 days prior to expiration of the then-current term.

2. Definitions

2.1 "***Affiliates***" means an entity whose voting shares are owned less than fifty percent (50%), but at least ten percent (10%) by a party to this Agreement and which is not controlled by, or under common control with, a party to this Agreement as its Subsidiary.

2.2 "***Customer***" means a customer for whom HP will carry out a Project.

2.3 “***Deliverable***” means the items, including, but not limited to Products, to be provided by Supplier to HP or Customer(s) in satisfaction of Supplier’s obligations to HP under an SOW.

2.4 “***HP***” means Hewlett-Packard Company and its Subsidiaries and Affiliates.

2.5 “***Intellectual Property***” or “***Intellectual Property Rights***” means any ideas, whether or not patentable, inventions, discoveries, processes, works of authorship, marks, names, know-how, and any and all rights in such materials throughout the world, whether existing under statute, common law or equity, now or hereinafter recognized, including but not limited to (a) patents, designs, inventor’s certificates, utility models, copyrights, moral rights, trade secrets, mask works, trade names and marks, service marks, trade dress, domain names and know-how, and (b) any application or right to apply for any of the rights referred to in clause (a); and (c) all renewals, extensions, and restorations, now or hereafter in force and effect for any of the rights referred to in clause (a).

2.6 “***Open Source***” means any software having license terms that require, as a condition of use, modification, or distribution of the software that such software or other software combined or distributed with such software be (a) disclosed or distributed in source code form, (b) licensed for the purpose of making derivative works, or (c) redistributable at no charge.

2.7 “***Personnel***” means all workers, including but not limited to Supplier’s employees, temporary personnel, flex-force and others employed or contracted by Supplier for the provision of Services to HP hereunder.

2.8 “***Pre-Existing Intellectual Property***” means any Intellectual Property of a party existing prior to the commencement of any work performed pursuant to the Agreement and all Intellectual Property that is conceived or developed outside of the scope of this Agreement without the use of the other Party’s confidential information or materials.

2.9 “***Prime Agreement***” means an existing and/or future agreement(s) and/or statement(s) of work between HP and Customer regarding a Project.

2.10 “***Project***” means a specific engagement or assignment to supply Services and/or Deliverables to a Customer.

2.11 “***Purchase Order***” means a written (electronic, hardcopy or fax) purchase order issued by HP to Supplier referencing this Agreement.

2.12 “***Services***” includes, but is not limited to, site preparation, Product installation, consulting, training, technical support, maintenance, warranty, and time and materials services related to the installation, use, or repair of Products, provided or to be provided by Supplier pursuant to this Agreement as specified in an SOW. Services may additionally include the repair and maintenance of HP POD products.

2.13 “***Site***” means any HP, third party, or Customer location where Services are provided.

2.14 “***Statement of Work***” or “***SOW***” means a document that describes the specific Services and/or Deliverables to be performed or provided under this Agreement that is signed by an authorized representative of both Supplier and HP.

2.15 “***Subcontractor***” means any and all third parties that have direct contracts with Supplier or with another subcontractor of Supplier to perform a portion of the Services under this Agreement.

2.16 “***Subsidiary***” means an entity controlled by, or under common control with, a party to this Agreement, through ownership or control of fifty percent (50%) or greater of the voting power of the shares or other means of ownership or control, for as long as such ownership or control continues to exist.

2.17 “***Product(s)***” as used herein shall mean the Supplier devices, products or systems and all parts and accessories thereto that may be listed from time to time in a Statement of Work (each of which may be based on **Exhibit A** attached hereto and incorporated herein).

3. Project Terms

3.1 Services. Supplier will provide those Services described in the SOW when and as provided in the SOW, subject to and in compliance with the terms and conditions of this Agreement and all Applicable Laws. All Services will be performed as specifically described in, and authorized by, a Purchase Order and accompanied by a SOW.

3.2 Statement of Work. The parties shall execute a SOW for the undertaking by the parties of each Project. A SOW shall be in the form of the template attached to this Agreement as **Exhibit A**. Upon execution of the corresponding SOW and receipt and acceptance of the Purchase Order, Supplier shall undertake to manufacture and ship the Deliverables and perform the Services as described in the SOW. Services set forth in any one SOW may be concurrent with and/or successive to other Services under their respective SOW. [*].

3.3 Prime Agreement. HP and Supplier acknowledge that certain terms and conditions set forth in the Prime Agreement between HP and Customer may relate to Supplier’s Services and/or Deliverables, and may be different than the terms and conditions of this Agreement and/or the SOW. To the extent if any that HP and Supplier agree to incorporate such a conflicting term or condition from a Prime Agreement into a particular SOW, that conflicting provision will be expressly set forth in the SOW and agreed upon by the Parties (each a “ ***Customer Flow Down***”). Except to the extent (if any) expressly incorporated into an SOW that is agreed upon by HP and Supplier, conflicting provisions in a Prime Agreement will have no effect on the terms and conditions of this Agreement or the SOW.

3.4 Good-Faith Cooperation. Supplier shall cooperate fully with HP in resolving any dispute involving Customer regarding Services or Deliverables.

3.5 Permits, Licenses and Inspections. Supplier will secure and pay for all licenses, permits and inspections necessary for prosecution and completion of the Services. Upon HP’s request, Supplier will deliver to HP copies of all permits, written approvals, licenses and inspections promptly after their receipt by Supplier.

3.6 Intentionally left blank.

3.7 Replacement or Removal of Personnel at HP's Request. HP may at any time request the replacement or removal of Supplier's representative, Personnel, or Subcontractor(s) assigned to the Project, but only with cause, and Supplier will immediately comply with such requests. HP will not be required to pay any additional costs associated with transitioning between Personnel removed for cause as provided in this Section 3.7.

3.8 Supplier Representative. Supplier shall appoint a representative to supervise and coordinate Supplier's performance of its obligations under this Agreement. The representative shall provide professional and prompt liaison with HP and have the necessary expertise and authority to commit Supplier. Supplier's representative shall participate in status meetings with HP and shall submit to HP periodic status reports, at times and in formats reasonably agreed by the parties. The Supplier Representative will prepare such periodic reports as reasonably requested by HP to measure Suppliers performance under this Agreement.

3.9 Customer Contact. Supplier shall not have any contact with the Customer pertaining to the Services and/or Deliverables without the prior written consent of HP. During the delivery phase of a Project Supplier may have direct communication with a Customer, limited solely to those communications necessary to effect delivery of the Deliverables and provision of the Services.

3.10 Performance to Schedule. Supplier shall meet each milestone, schedule and due date on the date specified in the SOW. Time is of the essence and Supplier shall provide prompt written notice to HP of any actual or anticipated delays, such notice to include a detailed plan to recover the time lost because of such delay. In the event that Supplier fails to fulfill an obligation by the date specified in the SOW, Supplier shall, at the request of HP and in addition to HP's other rights and remedies, arrange all such additional resources as are necessary to fulfill that obligation as early as practicable thereafter, at no additional charge to HP or Customer.

3.11 New and Follow-On Business. If while delivering Services, Supplier becomes aware of the existence of potential follow-on work or additional opportunities for Customer specifically related to the Services or Deliverables, Supplier will disclose such information to HP. Such notification will in no way prevent Supplier from pursuing such opportunities.

3.12 Supplier Sales Efforts. Supplier may maintain and/or pursue direct business opportunities with the Customer; provided, however, when Supplier Personnel are engaged in the provision of Services or Deliverables under this Agreement, such Personnel may not engage in activities which in the opinion of HP are solicitation of future business from the Customer.

4. Financial Terms

4.1 Prices. Prices for Services and Deliverables will be specified in a Purchase Order and/or SOW. Further agreements related to pricing may also be documented in **Exhibit B**, "Pricing". Pricing for Services and Deliverables will be inclusive of all travel and per diem costs unless otherwise set forth in a Purchase Order or SOW and therefore approved by HP.

4.2 Taxes. Except as otherwise provided in this Agreement, prices are inclusive of applicable value added tax and other similar taxes (collectively "***VAT***"), sales or use tax, freight charges and duties. HP shall be responsible for all taxes with respect to payments made under this Agreement to the extent such taxes are included in the price. HP shall not be responsible for any taxes measured by Supplier's net income or taxes imposed through withholding. If HP is required by law to withhold and remit tax relating to a Purchase Order, HP shall be entitled to reduce the payment by the amount of such tax. For U.S. purposes, and notwithstanding any language to the contrary above, prices are exclusive of sales and use tax. Such taxes, if applicable, shall be added separately in Supplier's invoice, and HP shall remit such taxes to Supplier. Supplier will not invoice or otherwise attempt to collect from HP for any taxes with respect to which HP has provided Supplier with (i) a valid resale or exemption certificate, (ii) evidence of direct payment authority, or (iii) other evidence, reasonably acceptable to Supplier, that such taxes do not apply.

4.3 Electronic Invoicing. Unless otherwise directed by HP, Supplier shall invoice HP electronically, at Supplier's sole expense. Supplier is authorized to, and shall, submit such invoices and required information directly to HP's authorized electronic invoicing contractor. Supplier further understands that HP may utilize contractors, at HP's sole discretion, to facilitate HP's order and invoicing processes, and such use may entail disclosure of information about the Supplier and the receipt and processing of any Purchase Order, invoice, or related documentation. Any such disclosure of information shall be under confidentiality obligations reasonably consistent with those agreed upon by HP and Supplier.

4.4 Payments. [*]. Payment will be in U.S. currency unless otherwise stated. Payment will not constitute acceptance of Services and/or Deliverables nor impair HP's right to inspect.

4.5 Payment Conditions. [*]

4.6 Most Favored Pricing. Supplier warrants that during the Term of this Agreement, the prices charged in this Agreement are not in excess of the lowest prices charged by Supplier to other similarly situated customers for similar Deliverables and Services that are purchased in similar quantities.

5. Ordering

5.1 Purchase Orders. Delivery of Services and/or Deliverables will be initiated by a Purchase Order issued to Supplier by HP and sent to the appropriate address as directed by the Supplier. Each Purchase Order will be consistent with the corresponding SOW, and will include: (i) reference to this Agreement, (ii) reference to the SOW containing the project requirements; (iii) other instructions pertinent to the Project or Purchase Order; (iv) quantity and price; (v) shipping and/or Project Site; (vi) delivery dates; and (vii) reseller certificate number. Each purchase order issued by HP to Supplier, whether or not referencing this Agreement, shall be subject to and governed by the terms of this Agreement. HP may decide in its sole discretion whether to execute any particular SOW and whether to issue any particular Purchase Order.

5.2 Order Acknowledgment. Supplier will promptly review any Purchase Order and will notify HP in writing or electronically within five business days after HP submits the Purchase Order to Supplier whether Supplier accepts or rejects that Purchase Order. Supplier may decide in its sole discretion whether to execute any particular SOW and whether to accept any particular Purchase Order.

5.3 PURCHASE ORDER REQUIREMENT. SUPPLIER ACKNOWLEDGES AND AGREES THAT IT WILL NOT COMMENCE ANY SERVICES AND/OR DELIVERABLES FOR HP OR INCUR ANY RELATED EXPENSES OR COSTS UNLESS AND UNTIL IT HAS RECEIVED A PURCHASE ORDER EXPRESSLY AUTHORIZING SUCH SERVICES AND/OR DELIVERABLES. SUPPLIER FURTHER ACKNOWLEDGES AND AGREES THAT IT SHALL NOT BE ENTITLED TO RECOVER, AND HEREBY IRREVOCABLY WAIVES ITS RIGHT TO PURSUE, ANY FEES, COSTS, LOSS OR DAMAGES FROM HP UNDER ANY LEGAL OR EQUITABLE THEORY IN CONNECTION WITH ANY SERVICES OR DELIVERABLES THAT WERE COMMENCED PRIOR TO RECEIPT OF A PURCHASE ORDER AUTHORIZING SUCH SERVICES AND/OR DELIVERABLES. SUPPLIER FURTHER AGREES AND ACKNOWLEDGES THAT ABSENT A MUTUALLY AGREED AND WRITTEN AMENDMENT TO THIS PROVISION, THE FOREGOING SHALL BE TRUE NOTWITHSTANDING ANY REPRESENTATION, PROMISE OR INDUCEMENT, WHETHER ORAL OR WRITTEN, MADE BY ANY EMPLOYEE OR AGENT OF HP. NOTHING CONTAINED HEREIN, NOR IN ANY STATEMENT OR WORK OR OTHER AGREEMENT OF THE PARTIES SHALL OBLIGATE HP TO ISSUE A PURCHASE ORDER UNDER ANY CIRCUMSTANCES. NO SOW WILL BE EFFECTIVE OR CREATE ANY OBLIGATION ON EITHER PARTY UNLESS AND UNTIL HP ISSUES A CORRESPONDING PURCHASE ORDER TO SUPPLIER AND SUPPLIER ACCEPTS IT.

5.4 Changes. Upon notice to Supplier, HP may propose a change to any requirement in a SOW and/or associated Purchase Order relating to undelivered Services or Deliverables. If such change affects the price or schedule, the Supplier will promptly advise HP of any changes that it deems necessary and the parties will promptly negotiate an equitable charge and amend the SOW, and HP will issue a revised Purchase Order authorizing the changes. HP will have no obligation to Supplier for any changes that are not authorized by a Purchase Order. The template for the Change Order Form is attached as **Exhibit G**.

5.5 Acceptance. Unless otherwise expressly provided in the SOW, HP will inspect, test, and accept or reject any Deliverable [*] after delivery of that Deliverable, or, if that Deliverable is being installed and/or commissioned by Supplier, then [*] after completion of such installation and/or commissioning. Similarly, HP will accept or reject any Services [*] after delivery of those Services. If not timely rejected, the Deliverable or Service will be deemed accepted, and each Deliverable or Service will be accepted unless it fails to conform to the express warranty requirements of Section 6 of this Agreement. Any rejection will be in writing and will be accompanied by a reasonably detailed description of the basis for the rejection so that Supplier can promptly commence a remedy for the stated deficiency, and pursue that remedy with diligence. After completion of any effort by Supplier to remedy the stated deficiency, this evaluation process will repeat, with additional [*] periods for HP to evaluate the Deliverable or the Service, as applicable, and if there are repeated rejections, additional periods shall be granted to Supplier to seek to remedy the deficiencies. Notwithstanding the preceding, HP may deem Supplier in breach of the Agreement for failure to deliver an acceptable Deliverable by the date specified in the SOW.

5.6 Shipping Terms. Unless otherwise expressly stated in the SOW, Deliverables (including Products) will be delivered to HP or its carrier Ex Works (Incoterms 2000) Supplier's factory, and title and risk of loss to each Deliverable shall pass to HP upon delivery to the carrier at Supplier's factory. If a SOW does not specify detailed shipping instructions, and if HP does not provide such details when reasonably requested by Supplier in advance of the shipping date, Supplier shall exercise its reasonable judgment in selecting details regarding the shipment. If HP provides special shipping instructions that increase the cost to ship a Deliverable, Supplier will notify HP before incurring that additional cost, and will add that additional cost to Supplier's invoice.

6. Warranties

6.1 Services and Non-Product Deliverables. Supplier warrants that (i) Services will be performed in a timely, professional manner in accordance with schedule requirements and consistent with the prevailing standards of care and skill exercised by professionals in the applicable line of work on projects of similar scope and complexity; (ii) the Personnel performing the Services will be competent and knowledgeable in the relevant technologies; (iii) there is no copyright, patent, or trade secret or other proprietary right of a third party that would be infringed or misappropriated by HP's or Customer's use of the Service or Deliverables in accordance with Supplier's published documentation for that Service or Deliverable; and (iv) all non-Product related materials and equipment supplied to HP, if any, and any associated workmanship, will be free from errors, faults, and defects and in conformance with the requirements of this Agreement and the associated SOW for a period of twelve (12) months following HP's acceptance. Supplier will ensure that all materials and equipment included in Deliverables that carry a manufacturer's warranty are registered with the manufacturer in Customer's name.

6.2 Product Warranty. Supplier shall include an appropriate warranty statement of Supplier's warranty to the Customer (or other end-user) with each individual Product package shipped to HP. The foregoing warranty is the only warranty given by Supplier with respect to any Product, and is the only warranty HP is authorized to give the Customer (or other end user) on behalf of Supplier covering any Product sold under this Agreement. HP will not provide and will expressly disclaim any independent warranty with respect to the Products in addition to Supplier's warranty. Supplier's product warranty as of the Effective Date is attached hereto as **Exhibit C**, "Current Active Power Statement of Limited Warranty." Supplier may modify its product warranty statement at any time upon thirty (30) days written notice to HP, and the new product warranty statement will apply to each SOW signed by the Parties, and each Purchase Order issued by HP and accepted by Supplier, after the effective date of that new product warranty statement.

6.3 Cure Period. The exclusive remedies for any breach of Supplier's product warranty are those expressly set forth in Supplier's product warranty statement that is applicable to a particular Product. With respect to the warranties given in Section 6.1, above, upon notice from HP, Supplier will promptly commence to remedy any non-conformance, and will diligently pursue that remedy until completion, with reasonable, periodic updates to HP regarding the status of that remedy within a thirty (30) day cure period, or a lesser time if based on requirements of the Prime Agreement that were incorporated into the applicable SOW. With respect to any Service, the exclusive remedy will be to require Supplier to re-perform the Service in a manner that complies with the warranty requirements of Section 6.1. With respect to any non-Product Deliverable, the exclusive remedy will be to require Supplier to promptly repair, replace or modify (at Supplier's option) that non-Product Deliverable so that it complies with the warranty requirements of Section 6.1.

6.4 Export and Import Compliance. Supplier will comply with all applicable export, import and trade-related laws and regulations of the United States and other nations. Supplier warrants that: (i) the products, software, technology, and other materials provided under this Agreement are classified for export as being eligible for US export licenses exception TSU (Technology and Software Unrestricted) under the Department of Commerce Export Administration Regulations and do not include prohibited features or functionality related to cryptography; and (ii) neither the U.S. Department of Commerce nor any other U.S. government agency nor other national governments have denied or abridged the export privileges of Supplier, and that Supplier will give immediate notice to HP in the event that its export privileges are denied or abridged. Supplier agrees that before releasing, transferring, or exporting any restricted products, software, technology, technical data or technical assistance to Country Groups D:1, E:1 and E:2 as identified in Supplement No. 1 to Part 740 of the U.S. Export Administration Regulations (see http://www.access.gpo.gov/bis/ear/pdf/740spir.pdf): Supplier will obtain any required US government authorization; and (ii) if any such restricted software, technology, technical data or technical assistance is provided by HP, Supplier will obtain written authorization from HP.

6.5 Supplier Warrants. Supplier warrants (i) it is under no obligation or restriction, nor will it assume any such obligation or restriction, which would in any way interfere with or be inconsistent with, or present a conflict of interest with its obligations under this Agreement, (ii) it has full power and authority to enter into this Agreement to HP and to grant HP the rights granted herein, (iii) that each Service and Deliverable is free of any and all restrictions, settlements, judgments or adverse claims; and (iv) it is sufficiently experienced, properly qualified, registered, licensed, equipped, organized, and financed to perform the Services in compliance with the terms of this Agreement.

7. Intellectual Property Rights

7.1 Pre-existing Intellectual Property - Ownership. Each Party will retain all right, title, and interest in and to its own Pre-Existing Intellectual Property irrespective of any disclosure of such Pre-Existing Intellectual Property to the other party, subject to any licenses granted herein.

7.2 Pre-Existing Intellectual Property – License. Supplier will not use any Supplier or third party Pre-Existing Intellectual Property in connection with this Agreement unless Supplier has the right to use it for HP's or Customer's benefit. If Supplier is not the owner of such Pre-Existing Intellectual Property, Supplier agrees to obtain from the owner all Intellectual Property Rights necessary for Supplier to comply with this Agreement and for HP to comply with the Prime Agreement, and to license such Intellectual Property Rights to HP and Customer in accordance with the express terms of this Agreement.

7.3 Supplier Intellectual Property. As between HP and Supplier, all Intellectual Property Rights of Supplier shall remain the sole property of Supplier. Supplier, as partial consideration for this Agreement, grants an irrevocable, non-exclusive, paid-up, world-wide license, with rights of sublicense, under Supplier's Intellectual Property Rights, for the current owner of each Product purchased from Supplier (whether HP or the Customer) to import and sell that Product, and to use that Product in accordance with Supplier's published documentation for that Product. No other license or assignment of Supplier's Intellectual Property Rights is expressed or implied in this Agreement.

7.4 Third Party Pre-Existing Intellectual Property. Supplier will not incorporate any materials from a third party, including Open Source or freeware, into any Deliverable unless (i) Supplier clearly identifies the specific elements of the Deliverable to contain third party materials in the SOW of which it is aware that has restrictions or license rights attached thereto, (ii) Supplier identifies the corresponding third party licenses and any restrictions on use thereof in the SOW of which it is aware,(iii) approval is given by HP as evidenced by a signed SOW (or other written and fully executed agreement) and (iv) in the case of Open Source materials, approval by HP shall include approval in accordance with HP's Open Source review processes. Supplier represents and warrants that Supplier has complied and shall continue to comply with all third party licenses (including all Open Source licenses) associated with any software components included in the Deliverable or any other materials supplied by Supplier. Supplier shall indemnify HP against any losses and liability incurred by HP and HP's Customers due to failure of Supplier to meet any of the requirements in any of the third party licenses. No Rights to HP Intellectual Property. Except for the limited license to use materials provided by HP to Supplier (if any) as may be necessary in order for Supplier to perform the Services under this Agreement, Supplier is granted no right, title, or interest in any HP Intellectual Property.

7.5 No Reverse Engineering. Except to the extent such restrictions are prohibited by applicable law, HP agrees not to reverse engineer any Product or other Deliverable, or any software that is incorporated into or provided by Supplier for use with a Product or other Deliverable.

8. **Indemnities**

8.1 Intellectual Property Indemnification.

8.1.1 Supplier shall defend, indemnify and hold harmless HP and Customer from all claims, losses, liabilities, damages, costs and expenses (including attorney and expert witness fees) suffered by reason of any third party claim to ownership of or any interest in any Deliverables, Services, or any portion thereof, including any claim made or any suit or proceeding brought against HP or Customer insofar as it is based on an allegation that any portion of the Services or Deliverables, when used in accordance with Supplier's published documentation, infringes or violates any patent, copyright, trademark, trade secret, utility model, industrial design, mask work, moral right or other intellectual property right ("***IP Claim***"). If the use of the Services, Deliverables, or any part thereof alone or in combination with other equipment, software, method or service is enjoined, and if that use and/or combination is in accordance with Supplier's published documentation, then Supplier shall, at its sole expense and option: (i) procure for HP and Customer the right to continue using the Services or Deliverables in accordance with Supplier's published documentation; (ii) replace the Services or Deliverables with a non-infringing version of equivalent function and performance; or (iii) modify the Services or Deliverables to be non-infringing without detracting from function or performance.

8.1.2 Notice. HP will give Supplier prompt notice of any IP Claim. If Supplier assumes defense of such IP Claim without reservation of rights, HP will provide Supplier the authority, information and reasonable assistance (at Supplier's expense) necessary to defend. Supplier will control defense, and HP will not settle such IP Claim without Supplier's consent, not to be unreasonably withheld. Should Supplier not diligently pursue resolution of such IP Claim or fails to provide HP with reasonable assurance that it will diligently pursue resolution, then HP may, without in any way limiting its other rights and remedies, defend the claim and collect all costs of doing so from Supplier. Any settlement or compromise Supplier desires to enter into will be subject to HP's prior approval, which must not be unreasonably withheld, or delayed. HP and any other indemnitee may, in its or their discretion and at their sole expense, participate in the defense of such IP Claim.

8.2 General Indemnity.

8.2.1 To the maximum extent permitted by law, Supplier will defend, indemnify, protect and hold harmless HP, its Customers, its officers, directors, employees, agents, Subsidiaries and Affiliates from and against any and all claims, losses, liens, demands, attorneys' fees, damages, liabilities, costs, expenses, obligations, causes of action, or suits, (collectively "***Claims***") by a third party, to the extent caused by, arising out of, or connected in any way with:

(a) any negligent act or omission, whether active or passive and whether actual or alleged, or willful misconduct, of Supplier or its employees, Subcontractors or agents, in the performance of this Agreement;

(b) the breach of this Agreement by Supplier or its employees, Subcontractors or agents of any of its contractual obligations, covenants, undertakings or promises under this Agreement; or

(c) property loss or damage, personal injury or death, that is caused by the negligence or willful misconduct of Supplier, or any of Supplier's employees, Subcontractors or agents, provided that property loss or damage will not in any event be a covered Claim if the property loss or damage resulted from a Product (whether the operation of a Product, the failure of a Product to operate, the installation or maintenance of a Product, or otherwise), or from a breach of warranty with respect to a Product, Deliverable or Service.

9. Insurance

9.1 Insurance. During the term of this Agreement, Supplier shall maintain in full force and effect, at Supplier's own expense, the insurance coverage and policy limits as specified in **Exhibit D**, "Insurance". In no event will the coverage or limits of any insurance maintained by Supplier under this Agreement, or the lack or unavailability of any other insurance, limit or diminish in any way Supplier's obligations or liability to HP under this Agreement.

10. Confidential Information

10.1 Confidential Information. "***Confidential Information***" means any information disclosed by either party to the other party during the Term of this Agreement, that (i) is marked at the time of disclosure as proprietary or confidential, (ii) all information or data concerning or related to either party's or Customer's products (including the discovery, invention, research, improvement, plans, roadmaps, development, manufacture, or sale thereof), processes, or general business operations (including sales costs, profits, pricing methods, organization, and employee lists), and any information obtained through access to either party's Information Systems (including but not limited to computers, networks, voice mail, etc.), either party's or Customer technical data, either party's or Customer's customers, or this Agreement, any and all pricing information whether or not in the Agreement, (iii) relates to the Deliverables (if any); (iv) is or concerns any Customer provided information; or (iv) if orally disclosed, is identified at the time of disclosure as proprietary or confidential and is described as such in a written summary delivered to the receiving party within thirty (30) days of disclosure. Confidential Information, however, does not include information that: (a) is now or subsequently becomes generally available to the public through no fault or breach on the part of a receiving party; (b) is known by the recipient prior to disclosure as noted by tangible record; (c) is independently developed by the receiving party without the use of any Confidential Information of the disclosing party; or (d) the receiving party rightfully obtains without a duty of confidentiality from a third party who has the right to transfer or disclose it; or (e) is disclosed under operation of law without protective order or confidential treatment.

10.2 Confidential Information Obligations. The receiving party will protect, and will ensure its employees, officers, agents and contractors will protect, Confidential Information by using the same degree of care as it uses to protect its own Confidential Information of a like nature (but no less than a reasonable degree of care) to prevent the unauthorized use, dissemination, disclosure or publication of such Confidential Information. The receiving party may disclose the Confidential Information only to those of its affiliates and Subcontractors and their respective employees, contractors, and advisors who have a need to know and who are under an obligation of confidentiality at least as restrictive as that contained herein. Each such recipient of Confidential Information will be advised of its obligations under this Agreement. Confidential Information received may be used only to fulfill the purposes of the Agreement. Customer Confidential Information may be used only to fulfill the purposes of this Agreement, or to communicate with or provide goods and services to the Customer under this Agreement. If the receiving party or any of its affiliates or subcontractors is requested or required by subpoena, court order, or similar process or applicable governmental regulation to disclose any Confidential Information, the receiving party agrees to provide the disclosing party with prompt notice of such request or obligation so that disclosing party may seek an appropriate protective order or procedure if it elects to do so.

10.3 Customer Confidential Information. Upon HP request related to any Project, prior to or simultaneously with execution of an SOW for that Project, HP may ask Supplier to execute such confidentiality agreement as Customer or HP may reasonably request, as a condition to HP signing that SOW with Supplier.

11. Personal Data

11.1 "Personal Data" Defined.

11.1.1 "***Personal Data***" means information related to any identified, or identifiable, person or legal entity, including without limitation HP, Customers, subcontractors and including the employees or customers of HP, Customers and subcontractors. " ***Personal Data***" shall also mean any additional data deemed personal data by any applicable personal data protection law, regulation, or directive, which data is available to Supplier or to which Supplier has access (i) in connection with this Agreement or any SOW or Purchase Orders issued pursuant to this Agreement; or (ii) in the course of performing any Services pursuant to this Agreement, a SOW, or a Purchase Order or a Customer order. "***Personal Data***" does not, however, include the written and electronic communications among HP, Supplier, and Customer, or any part of this Agreement, or any business record of Supplier, if the only information in that communication, contract, or business record that is related to an identified person is the name and/or contact information of a person or entity provided or maintained to identify the persons responsible for certain business functions under the Agreement and used solely for that purpose.

11.2 Supplier Obligations.

11.2.1 With regard to any Personal Data that Supplier receives from HP and/or HP Customers to perform Supplier's obligations under this Agreement, Supplier shall comply with all of the following obligations:

(a) Supplier shall comply with all applicable data protection laws and/or directives.

(b) Supplier's use of the Personal Data is limited to performance of Supplier's obligations under this Agreement. Supplier may only disclose Personal Data to those Supplier employees and contractors that have a need to know in order to perform Supplier's obligations under this Agreement and who have received privacy training from the Supplier. Said Supplier employees must be bound by confidentiality obligations no less restrictive that those contained in Section 10 (Confidential Information) of this Agreement.

(c) Supplier may not sell, rent, or lease Personal Data to anyone. Supplier may not disclose Personal Data to any third party, even for preservation of Personal Data, nor transfer the Personal Data to any third country without the advance, written permission of HP. In case Supplier is authorized by HP for subcontracting any services involving collecting, using, storing, transferring and otherwise processing Personal Data, Supplier will agree with its subcontractors to protect and process the Personal Data under terms no less restrictive than those contained in this Agreement. Further, HP reserves the right, at its sole option, to enter into additional confidentiality agreements directly with such subcontractors in order to ensure adequate protection of Personal Data and comply with all Applicable Laws. Supplier shall immediately notify HP if Supplier becomes aware of any unauthorized use or disclosure of Personal Data.

(d) Supplier shall use the same degree of care as it uses to protect its own information of similar nature (but never less than a reasonable degree of care) to prevent unauthorized use, dissemination or publication of Personal Data and will implement any technical and organizational measures to protect and prevent the disclosure of Personal Data which are required by Applicable Law. At a minimum, Supplier agrees to (i) implement appropriate technical and organizational measures to protect Personal Data against accidental or unlawful destruction or loss; unauthorized disclosure or access, in particular where processing involves the transmission of Personal Data over a network; alteration; and all other unlawful forms of processing and (ii) to implement appropriate procedures to ensure unauthorized persons will not have access to the data processing equipment used to process the Personal Data; any personnel it authorizes to have access to the Personal Data will respect and maintain the confidentiality and security of the Personal Data; and the measures and procedures that it uses will be sufficient to comply with all legal requirements. Personal Data shall also be considered Confidential Information and treated in accordance with the requirements for Confidential Information under this Agreement.

(e) In connection with protecting, collecting, storing, transferring and otherwise processing of Personal Data, Supplier agrees to act only in accordance with the requirements of this Agreement or instructions provided by HP either upon Supplier's request or HP's election.

(f) Not to copy or reproduce any Personal Data without the express written permission of HP, except as technically necessary to comply with this Agreement (e.g., duplication of data stocks as backup protection against loss of data).

(g) To immediately notify HP by telephone and follow up in writing if it becomes aware of any actual, suspected or alleged unauthorized use of, disclosure of, or access to Personal Data by itself or others, including notification of loss or suspected loss of data whether or not such data has been encrypted. Supplier will cooperate with HP in the manner reasonably requested by HP and in accordance with law, including but not limited to: conducting the investigation; cooperating with authorities; notifying, at Supplier's sole expense, affected persons, credit bureaus, other persons or entities deemed appropriate by HP; and issuing press releases. Such cooperation will include without limitation: (i) HP access to Supplier records and facilities; (ii) Supplier provision of all relevant data and reports to HP; and (iii) prior advance approval by HP of any notifications to impacted individuals or press releases.

(h) To inform HP promptly in writing if Supplier is of the opinion that any instruction from HP violates the applicable personal data protection regulations.

(i) When collecting, using, storing, transferring and otherwise processing, Supplier shall adhere to all applicable export and personal data laws, regulations and rules.

(j) Supplier will handle any Personal Data in a manner consistent with the current HP Privacy Policy, available as of the Effective Date at: www.hp.com/hpinfo/globalcitizenship/privacy/masterpolicy.html.

11.3 Records.

11.3.1 Upon request by HP or upon termination of the Agreement, Supplier shall deliver to HP any Personal Data in its possession and destroy any copies of Personal Data in the Supplier's files, unless otherwise required under operation of law.

11.3.2 Upon request by HP with reasonable notice and during business hours, Supplier agrees to submit its data processing facilities, data files and documentation needed for processing to auditing by HP (or a duly qualified independent auditor or inspection authority selected by HP for such purpose and not reasonably objected to by the Supplier) to ascertain compliance with this Agreement. Any auditor must sign Supplier's non-disclosure agreement.

11.4 Disclaimers.

11.4.1 Nothing in this Agreement shall be construed as an obligation (i) to disclose any particular information, (ii) to incorporate any disclosed information into a product, (iii) to warrant the accuracy or completeness of any information disclosed hereunder.

11.4.2 Notwithstanding the foregoing, nothing in this Agreement will be construed as an exclusion of any laws, regulations or rules pertaining to protection of personal data or export regulations that may be applicable to the services provided by Supplier under the Agreement and that must be observed by Supplier.

12. Security

12.1 Information Systems Defined. "***Information Systems***" means (i) devices including, but not limited to, computers, computer systems, servers, storage devices and communication systems; (ii) networks including, but not limited to video, voice, and data networks and their associated switching, routing and processing equipment; (iii) data and information that may be generated, stored, processed, retrieved or transmitted by such devices and networks, including software programs, specifications, and procedures for their operation, use and maintenance; and (iv) means of access to such devices, networks and data including, but not limited to, passwords, tokens, keys, logon scripts or other authentication information.

12.2 Access. Access, if any, to HP's or Customer's Information Systems is granted solely to perform the Services under this Agreement, and is limited to those specific HP or Customer Information Systems, time periods and personnel as are separately agreed to by HP and Supplier from time to time. HP or Customer may require Supplier's, Supplier's employees, Subcontractors or agents to sign agreements prior to access to HP's or Customer's Information Systems. Use of HP or Customer Information Systems during other time periods or by individuals not authorized by HP is expressly prohibited. Access is subject to HP and/or Customer business control and information protection policies, standards and guidelines as may be modified from time to time. Use of any other HP or Customer Information Systems is expressly prohibited. This prohibition applies even when an HP or Customer Information System that Supplier is authorized to access serves as a gateway to other Information Systems outside Supplier's scope of authorization. Supplier agrees to access Information Systems only from specific locations approved for access by HP. For access outside of HP or Customer premises, HP will designate the specific network connections to be used to access Information Systems.

12.3 Security Measures and Audit Right. Without limiting the foregoing, Supplier agrees to maintain security measures to comply with the above obligations and to ensure that access granted will not impair the integrity and availability of HP and/or Customer Systems. Upon reasonable notice to Supplier, HP may engage an independent third party, at HP's expense, to audit Supplier and the Customer may audit Supplier to verify Supplier's compliance with these obligations. As a condition to this audit, any third party auditor selected by HP must be reasonably acceptable to Supplier and must sign Supplier's non-disclosure agreement.

12.4 Site Access. If HP permits Supplier access to any HP, third party, or Customer location where Services are to be performed (each a "***Site***"), then Supplier shall comply with all applicable Site security and safety policies and procedures, including, but not limited to, **Exhibit E**, "General Safety and Security Policies." Supplier shall from time to time and in response to any specific request from HP, provide HP with a list of all Personnel whom it designates to perform the Services that will require access to the Site. Supplier will immediately replace, at Supplier's expense, Personnel who fail to comply with applicable Site security and safety policies.

13. Limitation of Liability

Limitation of Liability. EXCEPT FOR SUPPLIERS INDEMNIFICATION OBLIGATIONS, OBLIGATIONS UNDER SECTIONS 10 AND 11, HP WILL NOT BE LIABLE TO SUPPLIER AND SUPPLIER WILL NOT BE LIABLE TO HP OR CUSTOMER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, PROFITS OR REVENUE, COST OF CAPITAL OR DOWNTIME COSTS), OR FOR ANY EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF ANY PERFORMANCE OF THIS AGREEMENT OR ANY PURCHASE ORDER, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. Termination

14.1 Termination Conditions.

14.1.1 This Agreement, all or any part of a Purchase Order, and/or all or any part of an SOW hereunder may be terminated upon notice in writing:

(a) By HP, with or without cause, upon thirty (30) days advance written notice.

(b) By HP, with or without cause, in the event a change request, as described in Section 5.4 (Changes), is not agreed within ten (10) days after such change is proposed, provided, however, that termination under this subsection (b) shall only be effected with respect to the Service(s) or Deliverable(s) that were subject to the change request.

(c) By HP, with or without cause, in the event of a Force Majeure event, as described in accordance with the provisions of Section 15 (Force Majeure) below.

(d) By either party if the other party breaches any material provision of the Agreement, of all or any part of a Purchase Order, and/or of any SOW hereunder, and such breach is not cured within thirty (30) days or a lesser time if based on requirements of the Prime Agreement that were expressly incorporated into and agreed-upon in the applicable SOW, after written notice thereof is received by the other.

(e) By either party, immediately, if the other party has a receiver appointed, or an assignee for the benefit of creditors, or in the event of any insolvency or inability to pay debts as they become due by the other party, except as may be prohibited by applicable bankruptcy laws.

(f) By HP immediately if the Prime Agreement or the relevant portion thereof is terminated.

14.2 Effect of Termination.

14.2.1 Upon termination of this Agreement for any reason, each Purchase Order (and the corresponding SOW) not specifically terminated will continue and the terms and conditions of this Agreement will continue to govern the Purchase Order. Upon termination of any SOW or Purchase Order, and conditioned upon reaching agreement with HP regarding the equitable amount due for any in-progress Deliverables, Supplier will immediately provide HP with any and all in-progress Deliverables, and all completed Deliverables that have a scheduled shipment date that falls on or before the effective termination date. As HP's sole obligation to Supplier resulting from termination of a Purchase Order, HP will pay Supplier for Services that have been rendered, plus an equitable amount for the partially completed Deliverables, plus the agreed to price for the completed Deliverables.

14.3 Return of Materials.

14.3.1 Upon termination of this Agreement or completion of Supplier's performance under an SOW, whichever occurs first, Supplier shall promptly upon HP's request return to HP all materials and or tools provided by HP or Customer under this Agreement, and all written Confidential Information provided by HP or Customer to Supplier, unless any of the foregoing relate to an SOW that has not yet been terminated, and HP shall promptly upon Supplier's request return to Supplier all written Confidential Information provided by Supplier to HP, unless related to an SOW that has not yet been terminated. However, neither HP nor Supplier will be required to return or destroy all or any portion of its email records, computer backup archives, or database records.

14.4 Surviving Provisions.

14.4.1 The following sections shall survive the termination or expiration of this Agreement: Section 1 (Nature of Agreement), Section 2 (Definitions), Section 4 (Financial Terms), Section 6 (Warranties), Section 7 (Intellectual Property Rights), Section 8.1 (Intellectual Property Indemnity), Section 8.2 (General Indemnity), Section 9 (Insurance), Section 10 (Confidential Information), Section 11 (Personal Data), Section 13 (Limitation of Liability), Section 14.2 (Effect of Termination), Section 20 (General Provisions), and all licenses expressly granted to HP for Deliverables.

14.5 Temporary Suspensions

14.5.1 HP shall have the right to temporarily suspend the performance of Services under a SOW as a part of an HP mandated temporary suspension (each, a "***Temporary Suspension***"); provided, however, that (i) HP shall provide Supplier with advance notice of each Temporary Suspension as soon as possible; (ii) Supplier shall not be obligated (but shall use commercially diligent efforts at no additional cost to HP) to retain the availability of its Personnel to resume providing Services upon the expiration of the Temporary Suspension; and (iii) in the event that the Temporary Suspension becomes permanent, as determined in the sole discretion of HP, then the relevant SOW shall be deemed to be terminated without cause pursuant to Section 14 (Termination). For purposes of this section only, in addition to the methods of notice permitted in Section 20.6 (Notices), notice of temporary suspension may also be provided via electronic mail and voice mail to (i) the person identified in the Agreement to receive notices, or (ii) under this agreement notices may instead be sent to the applicable Project Managers identified in each SOW.

15. Force Majeure

15.1 Force Majeure. Nonperformance of either party will be excused to the extent that party's performance is rendered impossible by an act of God, or other cause beyond the party's reasonable control including earthquake, fire, flood, war, embargo, riot or an unforeseeable intervention of a government authority where the failure to perform is beyond the control and not caused by the negligence of the non-performing party which causes complete business interruption for a period of two (2) or more business days. The non-performing party shall give prompt notice of the delaying event with an estimate of its duration and make reasonable efforts to perform. Should such a force majeure event last more than fourteen (14) calendar days, HP may by written notice to Supplier terminate this Agreement, the affected SOW and/or Purchase Order.

16. Relationship of the Parties

16.1 Independent Contractors.

16.1.1 Supplier will act solely as an independent contractor. Nothing contained herein will be construed to create the relationship of principal and agent, employer and employee, partners or joint venturers. HP assumes no liability for personal injury or property damage arising out of Supplier's performance of this Agreement.

16.2 Personnel.

16.2.1 All Personnel shall be subject to the direction, supervision, and control of Supplier. Supplier will be fully responsible for the acts and safety of Personnel while rendering Services to or for HP, its officers and employees. Supplier shall enforce strict discipline and good order among its Personnel and shall ensure that all Personnel comply with all applicable provisions of this Agreement. Supplier shall not employ Personnel unfit or unskilled in the work assigned to them. As between HP and Supplier, Supplier shall be solely responsible for:

(a) Payment of all Personnel compensation; and

(b) Payment of Personnel legal and contractual benefits, including but not limited to social security, health insurance coverage and occupational benefits; and

(c) Compliance with all other employer duties and obligations in respect to Personnel, including payment of withholding taxes, as applicable locally; and Evacuation of Personnel, including from any Site, and all associated costs.

16.3 Back-Up Personnel.

16.3.1 Supplier shall provide back-up personnel for each of its Personnel assigned to perform Services and/or provide Deliverables as part of an HP Project for a Customer in the event of illness, disability, vacation, leave, or absence for any reason. Said back-up Personnel shall cover all duties and responsibilities of Supplier's regular Personnel with no disruption in service. HP shall be informed prior to back-up Personnel being used.

16.4 Termination or Reassignment of Personnel

16.4.1 Supplier will immediately notify HP upon termination or re-assignment of any Personnel who have been granted access privileges to an HP or Customer Site, Information System or communication network, including but not limited to, voice mail and e-mail. Additionally, Supplier shall be responsible for the return of all equipment, security badges and access cards issued to such Personnel by HP and/or Customer.

16.5 Subcontractors.

16.5.1 Supplier agrees to impose on its Subcontractors substantially the same obligations imposed upon Supplier under this Agreement with respect to safety, information security confidentiality, personal data, and HP's Contingent Worker Code of Conduct (available at http://www.hp.com/go/supplierportal). Prior to commencement of the Services, and subsequently as Personnel are added, Supplier shall provide HP with a list of Personnel performing Services at a Site for approval by HP. Supplier's execution of any subcontracts, including subcontracts approved by HP, will not relieve, waive or diminish any obligation Supplier may have to HP under this Agreement. Supplier shall be responsible and liable for all acts of its Subcontractors, their employees or agents that are related to the Services or a Deliverable. Compensation for subcontracted Services will be included in the fees and costs billed by Supplier according to Section 4 (Financial Terms) of this Agreement.

16.6 Drug Testing and Background Checks.

16.6.1 Supplier shall, at Supplier's own expense, comply with requirements set forth in **Exhibit F**, Drug Testing and Background Checks. Supplier shall maintain records of required testing and background checks and make such records available to HP upon request.

16.7 Contingent Worker Code of Conduct

16.7.1 Supplier will comply with HP's Contingent Worker Code of Conduct as made available at: http://www.hp.com/go/supplierportal.

16.8 Prior Employment

16.8.1 Individuals whose prior employment ended as a result of involuntary termination for misconduct on any HP or Customer premises are not permitted on the Site and Supplier shall not knowingly assign such individual to perform any Services under a SOW without prior written authorization from HP. Personnel assigned to a SOW must not have been regular employees of HP at any time during the twelve (12) month period immediately prior to the assigned Personnel's first day of work on the applicable SOW.

17. (Omitted)

18. Audit and Recordkeeping

18.1 Right to Audit. In the event HP's Customer requires the right to audit HP's subcontractors, Supplier agrees that HP's customer shall have such audit rights as are required to be flowed down to subcontractors.

18.2 Reports. Supplier may be asked to prepare and submit draft reports and final reports to HP as part of the Services. For analytical work performed by Supplier, reports must include a description of analytical methods and quality assurance procedures employed. Upon request, Supplier will also provide HP with one copy of the text of any report in electronic format.

18.3 Records. Supplier will maintain books, records, documents and other evidence pertaining to costs, charges, fees and other expenses incurred in connection with the Services to the extent and in such detail as will properly evidence all costs or labor, materials, equipment, supplies and work, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this Agreement. Such records shall be retained for a period of no less than five years.

18.4 Quality. In the event of any quality issues or concerns, upon reasonable, prior, written notification, HP shall have the right to review Supplier's quality control processes related to the quality issue or concern, and Supplier shall provide HP with access to or copies of Supplier's related records.

19. (Omitted)

20. General Provisions

20.1 No Assignment. Supplier shall not delegate its duties nor assign its rights or obligations under this Agreement and/or any SOW without HP's prior written consent. Any attempted delegation or assignment by Supplier without such consent shall be void.

20.2 Choice of Law. This Agreement shall be interpreted and governed by the laws of the State of New York, USA, without giving effect to that State's choice of law rules. Supplier and HP expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement or to the transactions processed under this Agreement.

20.3 Compliance with Applicable Law. Supplier warrants that it will comply with all Applicable Law in its performance under this Agreement. "***Applicable Law***" means all constitutions, laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits and legally binding requirements of all federal, state and local governmental authorities applicable to either party's performance under this Agreement.

20.4 Headings. The section captions and headings used in this Agreement are for reference only, and are not to be construed in any way as terms or be used to interpret the provisions of this Agreement.

20.5 Non-Restrictive Relationship. Except for the express duties of confidentiality owed by HP to Supplier, and the acknowledgement of Supplier's Intellectual Property Rights, nothing in this Agreement shall be construed so as to preclude HP from independently developing or from acquiring, marketing or providing similar products or services that may perform the same or similar functions as the Services and/or Deliverables. In addition, except for the express duties of confidentiality owed by Supplier to HP, and the acknowledgement of HP's Intellectual Property Rights, nothing in this Agreement shall be construed so as to preclude Supplier from marketing or providing the Services and/or Deliverables, or products or services similar to the Services and/or Deliverables, to third parties, in so far as such third parties are not competitors of HP under the same Customer opportunity.

20.6 Notices. All notices required under this Agreement will be in writing and will be sent to the address of the recipient set out below, or such other address as the recipient may designate by notice given in accordance with this section. Any such notice may be delivered by hand, by overnight courier or by certified letter, return receipt requested, and will be deemed to have been received: (i) if delivered by hand - at the time of delivery; (ii) if delivered by overnight courier - 24 hours after the date of delivery to courier with evidence of delivery from the courier; (iii) if delivered by certified mail – three (3) business days after the date of mailing. For purposes of this section the address of each party will be:

SUPPLIER:

Active Power, Inc.
2128 West Braker Lane, BK12
Austin, TX 78758
Attn: Chief Financial Officer
Fax: (512) 836-4511

HP:

Hewlett-Packard Company
4 Buckthorn Lane
Savannah, GA 31411
Attn: William Schwickrath
Fax: (703) 842-6238

20.7 Precedence. Except where expressly stated otherwise in this Agreement, if a conflict in contract terms arises, the order of precedence is as follows (in descending order): (i) the applicable SOW, (ii) this Agreement, (iii) the exhibits and attachments to this Agreement. (iv) HP Purchase Order terms on the face of thereof, and its annexes incorporated on the face thereof. (No standard terms and conditions of purchase that are part of any HP Purchase Order will be given any effect, and no standard terms and conditions of sale provided by Supplier will be given any effect.) Notwithstanding the foregoing, the following provisions in this Agreement will always control in the event of a conflict, unless the SOW expressly refers to this Section 20.7 and states that it overrides the particular provision of this Agreement notwithstanding this Section 20.7: Section 7 (Intellectual Property Rights), Section 8 (Indemnities), Section 9 (Insurance), Section 10 (Confidential Information), Section 11 (Personal Data), and Section 13 (Limitation of Liability). If additional Customer Flow Downs (which must by definition have been expressly incorporated into the applicable SOW) imposes additional obligations on Supplier as to these six terms, this is not considered a conflict. In such an event, Supplier will be required to comply with both HP's terms and the additional requirements of the Customer Flow Down.

20.8 Publicity. Except as provided herein, each party agrees not to publicize or disclose the existence or terms of this Agreement to any third party without the prior written consent of the other except as required by law. In particular, no press releases (including postings on the internet) shall be made without the mutual written consent of each party.

20.9 Reference to Days. All references in this Agreement to "***days***" will, unless otherwise specified, mean calendar days.

20.10 Severability. If any term or provision of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected. In such event, the parties will negotiate a valid, enforceable substitute provision that most nearly effects the parties' original intent in entering into this Agreement or provide an equitable adjustment in the event no such provision can be added.

20.11 Waiver. Neither party's failure to exercise or delay in exercising any of its rights under this Agreement shall constitute or be deemed to constitute a waiver, forfeiture, or modification of such rights. Waiver of a breach of this Agreement shall not be deemed a waiver of any future breach. Any waiver must be in writing and signed by each party's representative.

20.12 Dispute Resolution. In the event of disagreement with respect to any aspect of this Agreement or any subordinate SOW or Purchase Order, the parties agree to discuss in good-faith to reach an amicable resolution, and to escalate such resolution process to the appropriate members of their respective management organization who have the power and authority to achieve a successful resolution. Before either party commences an action, other than for an injunction or restraining or protective order against the other party, it shall give written notice to the other party of its intention to file such action, and the senior management of the parties then shall meet in good faith to resolve the dispute by an alternative dispute resolution method such as non-binding mediation. If the first party to file an action under this Agreement or otherwise against the other Party is Supplier, then the **exclusive forum and venue** to resolve those claims and any and all other disputes related in any way to this Agreement shall lie in the courts, state or federal as they may have jurisdiction, in Texas.

20.13 HP Global Trade Requirements. Supplier acknowledges that this Agreement is subject to the export, import and other trade-related laws and regulations of the United States and other national governments, including but not limited to the provisions in Exhibit H, "HP Global Trade Requirements" and agrees to exercise commercially reasonable efforts to comply with same. Supplier expressly warrants that it will comply with all Applicable Laws and regulations of the United States and all other national governments relating to the export of technology or technical data with regard to any technology or technical data provided by HP to Supplier.

20.14 U.S. Federal Procurement Requirements. Pursuant to FAR 52.212-5(e) and/or FAR 52.244-6, for any HP Purchase Order referencing a specific U.S. Government prime contract, all applicable procurement regulations required by federal statute or regulation to be inserted in U.S. Government subcontracts apply, including but not limited to FAR 52.203-13, Contractor Code of Business Ethics and Conduct, FAR 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009, FAR 52.219-8-Utlization of Small Business Concerns, FAR 52.222-26 – Equal Opportunity, FAR 52.222-35-Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and other Eligible Veterans, FAR 52.222-36 – Affirmative Action for Workers with Disabilities, FAR 52.222-39 – Notification of Employee Rights Concerning Payment of Union Dues or Fees, FAR 52.222-41 – Service Contract Act of 1965, FAR 52.222-50 – Combating Trafficking in Persons, FAR 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements, FAR 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Service – Requirements, FAR 52.222-54, Employment Eligibility Verification, FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations, FAR 52.247-64 – Preference for Privately Owned U.S. Flag Commercial Vessels as required in accordance with paragraph (d) of FAR clause 52.247-64. In addition, the Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Supplier's directly pertinent records involving transactions related to this Agreement that are subject to these U.S. Federal Procurement Requirements as required by FAR 52.212-5(d)(1), Comptroller Examination of Record. These provisions have the same force and effect as if they were stated in their full text.

20.15 American Recovery and Reinvestment Act. Pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for any HP Purchase Order referencing funding by the Recovery Act, all applicable procurement regulations required by federal statute or regulation to be inserted in U.S. Government subcontracts apply, including but not limited to FAR 52.204-11, American Recovery and Reinvestment Act – Reporting Requirements, and FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items Alternate II (May 2009), which provides for examination of any of the Contractor's or subcontractors' records that pertain to, and involve transactions funded by the American Recovery and Reinvestment Act of 2009. These provisions have the same force and effect as if they were stated in their full text.

20.16 U.S. Government Rights. Commercial software and commercial computer software documentation is provided to United States Government agencies in accordance with the terms of this Agreement, FAR 12.212 and DFARS 227.7202 For Commercial Technical Data the restrictions set forth in FAR 12.211 and for DoD agencies DFARS 252.227-7015 shall also apply. Data first produced in the performance of work under this Agreement is provided to U.S. Government agencies in accordance with FAR 52.227-14(b)(1)(i).

20.17 Counterparts. This Agreement or any SOW may be executed in duplicate originals, or, in separate counterparts which are effective as if the parties signed a single original. A facsimile of an original signature transmitted to the other party is effective as if the original signature was sent to the other party. The parties agree that this Agreement and any SOW hereunder will be considered fully executed when both parties have provided a facsimile of the Agreement or SOW containing a signed signature page to the other party. Each party agrees that it will, upon request, immediately send to the other, by overnight courier, an original of the signed counterpart of the Agreement or SOW that was provided by facsimile.

20.18 No Third Party Beneficiary. This Agreement does not confer any right or remedy other than to the parties hereto and their respective permitted successors and assigns, and no action may be brought against any party hereto by any third party claiming as a third party beneficiary to this Agreement or any accepted Purchase Order. Nothing in this Agreement is intended to relieve or discharge any obligation or liability of any third party to any party to this Agreement, and nothing herein confers, or is intended to give any third party, any right of subrogation.

20.19 Supplier's Holiday Schedule. Supplier agrees to follow the holiday schedule set forth in an exhibit to the applicable SOW for each Project. Supplier shall not perform Services on any day identified on such exhibit, unless authorized in writing by the HP program manager.

20.20 Language. This Agreement is drafted in U.S. English. If it is translated into other languages, the U.S. English version alone shall govern. If an exhibit or amendment is drafted in a language other than English, an English version shall always be created.

20.21 Entire Agreement. This Agreement, together will all exhibits hereto, SOWs and Purchase Orders, constitutes the entire agreement between HP and Supplier and supersedes all prior or contemporaneous communications, representations, and agreements, whether oral or written, regarding the subject matter of this Agreement. No modifications of, or amendments to, the terms of this Agreement shall be valid unless in writing and signed by an authorized representative of each party.

21. Exhibits

21.1 Exhibits. All exhibits attached to this Agreement will be deemed a part of this Agreement and incorporated herein by reference. The term "***Agreement***" includes the exhibits listed in this section. Terms, which are defined in this Agreement and used in any exhibit, will have the same meaning in the exhibit as in this Agreement.

Exhibit A: Statement of Work Template

Exhibit B: Pricing

Exhibit C: Current Active Power Statement of Limited Warranty

Exhibit D: Insurance

Exhibit E: General Safety and Security Policies

Exhibit F: Drug Testing and Background Checks

Exhibit G: Change Request Form

Exhibit H: HP Global Trade Requirements

APPROVED AND AGREED TO:

SUPPLIER:

Active Power, Inc.

/s/ John Penver
Authorized Representative

February 4, 2010
Date

John K. Penver
Printed name

Chief Financial Officer
Title

Hewlett-Packard Company

/s/ Kathy McCurdy
Authorized Global Supply Chain Services Representative

February 1, 2010
Date

Kathy McCurdy
Printed name

AMS Global Supply Chain Services Mgr
Title

Authorized Business Representative (if required)

Date

Printed name

Title

EXHIBIT A

1 INTRODUCTION

This Statement of Work (the “SOW”) is entered into on Effective Date of SOW, between Hewlett-Packard Company (“HP”) and Active Power, Inc. (“Supplier”). This SOW is governed by the terms of Agreement #CW196597 (the “Agreement”) as though the provisions of the Agreement were set forth in their entirety within this SOW and so that this SOW and the Agreement shall be considered one, fully integrated document.

2 PROJECT SCOPE

2.1 Purpose

This SOW is issued by HP in support of HP’s Project Title and/or Description project ("Project") for HP’s customer, HP Customer Name ("Customer").

2.2 Project Summary

Supplier will provide services for a fixed price or on a time and expenses basis, to HP for approximately Number of days/weeks/months beginning on or about Start Date, in order to fulfill the objectives of providing type of services to Customer as HP’s Supplier for the Project. The Project location is at project location, e.g. Customer Address.

2.3 Terms and Acronyms

The following defined terms are in addition to those defined in the Agreement and shall apply to work performed by the Supplier under this SOW.

3 PROJECT MANAGEMENT

3.1 Supplier Project Manager

Supplier will assign a qualified and trained Project Manager to represent the Supplier on matters related to Supplier performance under this SOW. The Supplier Project Manager is the interface to the HP Project Manager and is responsible for the day-to-day management, conduct and performance of Supplier employees and any HP authorized subcontractors used by the Supplier to deliver Services and/or Deliverables under this SOW.

	Supplier Project Manager
Name	
Title	
Phone	
email	

3.2 HP Project Manager

HP will name and assign a qualified and trained Project Manager to represents HP on matters related to the Project, its delivery to the Customer, and the requirements of the Customer SOW. The HP Project Manager is the interface to the Customer, and shall represent the Supplier on all such matters to the Customer. The HP Project Manager is responsible for the overall conduct of the Project and for the accuracy and content of this SOW. Changes to the Project impacting this SOW are coordinated with, approved, and managed by the HP Project Manager.

	HP Project Manager
Name	
Title	
Phone	
email	

3.3 HP Subcontract Manager

The HP Project Manager will engage and be represented by the identified HP Subcontract Manager on all procurement related matters, including but not limited to the governing Agreement terms, Customer Flowdowns, Supplier Project Pricing, and HP Purchase Orders.

	HP Subcontract Manager
Name	
Title	
Phone	
email	

3.4 Supplier Performance Obligations

Supplier will have exclusive control over the means, method and details of fulfilling Supplier's obligations hereunder including sole responsibility for managing the delivery of all Services and/or Deliverables hereunder.

3.5 Supplier Compliance with Agreement

Supplier will ensure that all applicable terms and conditions of the governing Agreement and this SOW are communicated to, understood by, and complied with by the Supplier resources assigned to this Project.

4 DESCRIPTION OF SERVICES

4.1 Supplier Provided Services

Supplier will provide the following services (collectively, the "Services"): insert

4.2 Supplier Personnel Qualifications

Supplier will provide personnel with the following qualifications and skills to perform the Services:

4.3 Supplier Personnel

Supplier will provide the personnel identified and/or described in this SOW or an attachment hereto and represents that such personnel possess the requisite qualifications and skills to perform the Services.

4.4 Replacement of Supplier Key Personnel

The personnel identified and/or described in this SOW or an attachment hereto as “Key Personnel” are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, or otherwise substituting any other personnel for specified Key Personnel, the Supplier shall notify HP at least insert number of days prior to the proposed substitution date and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on Supplier performance. No diversion or substitution shall be made by the Supplier without written consent of HP which shall not be unreasonably withheld.

4.5 Acceptance Criteria for Services

Acceptance will occur upon HP’s written acceptance of the Services. In evaluating whether or not the Services are acceptable, HP will consider the following criteria:

5 DESCRIPTION OF DELIVERABLES

5.1 List of Deliverables

Supplier will provide the Services described in Section 4 to develop and deliver the following deliverables (collectively, the “Deliverables”):

5.1.1 Status Reports

Supplier will provide weekly written status reports that summarize:

a) The Services (including all tasks and activities) performed and effort (hours) expended by Supplier for that time period.

b) A forecast of activities proposed to be completed by Supplier during future weeks, and the estimated effort (number of hours) to complete those activities. These projections for future week’s activities and effort will be for informational purposes only and will not be binding.

c) Any issues that need to be addressed.

Supplier will submit its status reports to the HP Project Manager each week by Monday of the following week.

5.2 Acceptance Criteria for Deliverables

Acceptance will occur upon HP’s written acceptance of the Deliverables following Supplier’s delivery thereof. In evaluating whether or not the Deliverables are acceptable, HP will consider the following criteria:

6 FEES

[Note] Determine the appropriate pricing model, either (i) time and materials or (ii) fixed price. Pricing models and terms will vary by Customer project and should mirror the Customer agreement. Customize as necessary.

[OPTION 1 - TIME AND MATERIALS Delete Sections 6.5 to 6.8 when this price option is selected]

6.1 Time and Materials Price Rate

Supplier will provide the Services and Deliverables on a time and materials basis at the hourly rate(s) set forth below for its personnel identified and/or described below in the Expertise Table and Rate Table by market offering, skill, level and role:

Expertise Table

Line Item	Market Offering	Skill	Level	Role

Rate Table

Line Item	Market Offering	Skill	Level	Role

6.2 Pricing Terms

[Note] Insert any additional pricing and related terms.

6.3 Payment Schedule

Invoices will only be sent after completion and delivery of all Services and/or Deliverables; provided, however, that notwithstanding the foregoing, invoices may be sent monthly for Services completed the prior month if the only Deliverables are regular written status reports of Services performed. Notwithstanding the rendering of any invoice, payment for Services and/or Deliverables delivered hereunder is subject to HP's and Customer's acceptance of such Services and/or Deliverables.

6.4 Travel Expenses

Supplier will track and invoice HP for actual, reasonable and documented travel costs and expenses ("Expenses") as incurred, consistent with the expense and travel restrictions set forth in the Agreement, if any. Expenses must be approved in advance in writing by HP to qualify for reimbursement. Expenses are estimated at $Estimated Dollar Amount. No margin or uplift will be added to Expenses invoiced to HP.

[OPTION 2 – Fixed Price – Delete Sections 6.1 to 6.4 when this price option is selected]

6.5 Fixed Price

Supplier will provide the Services and/or Deliverables for a fixed price of $Fixed Dollar Amount.

6.6 Payment Schedule

[Option 1 - Use this option when there will be a single fixed price payment.] An invoice will only be sent after completion and delivery of all Services, and/or Deliverables. Notwithstanding the rendering of any invoice, payment for Services, and/or Deliverables delivered hereunder is subject to HP's and Customer's acceptance of such Services and/or Deliverables.

[Option 2 - Use this option when there will be multiple fixed price payments that are tied to the achievement of specific milestones.] Supplier will issue invoices in accordance with the following payment schedule: Payment Schedule

6.7 Invoicing

Invoices will only be sent after achievement of the applicable milestone. Notwithstanding the rendering of any invoice, payment for Services and/or Deliverables delivered hereunder is subject to HP's acceptance of such Services, and/or Deliverables.

6.8 Travel Expenses

Travel costs and expenses are included in the price.

7 CUSTOMER FLOWDOWNS

The terms and conditions set forth below are terms and conditions flowed to the Suppler based upon the Customer prime contract with HP. Such terms are applicable to the Supplier for this Project and may either be in addition to, amend fully or partially, or delete in their entirety, the terms and conditions contained in the Agreement governing this SOW.

Insert Customer Flowdowns here

8 SIGNATURES

This SOW may be executed in counterparts and by electronic signature and may be delivered by facsimile and/or electronic transmission. Each counterpart will be deemed an original but all counterparts together will constitute one and the same instrument.

AGREED TO:

	HP Entity (Authorized Business Representative)
Signature	
Name	
Title	
Date	

	Supplier Entity
Signature	
Name	
Title	
Date	

	(Global Supply Chain Services)
Signature	
Name	
Title	
Date	

EXHIBIT B
PRICING

[*]

EXHIBIT C

CURRENT ACTIVE POWER STATEMENT OF LIMITED WARRANTY

This limited warranty ("Limited Warranty") constitutes the complete and exclusive warranty agreement between the original buyer ("Purchaser") of the Active Power-branded power quality product ("Product") and Active Power Inc. and its worldwide subsidiaries ("Active Power") regarding warranty for the Products and supersedes any prior warranty or representation, including representations made in Active Power sales literature or advice given to Purchaser by Active Power or an agent or employee of Active Power, that may have been made in connection with Purchaser's purchase of the Products. No change to the conditions of this Limited Warranty is valid unless it is made in writing and signed by an authorized representative of Active Power.

WARRANTY COVERAGE

Active Power warrants to Purchaser that, subject to the terms of this Limited Warranty, each new Product sold by Active Power to Purchaser shall be free from defects in material and workmanship in normal use and service for a period of 12 months from the date of commissioning (as evidenced by a document executed by Active Power, if applicable) or 18 months from the date of shipment from Active Power, whichever period terminates first, as shown in the records of Active Power (the "Limited Warranty Period").

This Limited Warranty is non-transferable to anyone who obtains ownership of the Product from Purchaser, and is subject to the following additions, exceptions, exclusions and limitations.

PROCEDURES

To make any warranty claim hereunder, Purchaser must direct its claim to Active Power, giving complete model, serial and code numbers, voltage and other Product details, and description of the problem. Purchaser may write Active Power, attention Service Department, 2128 West Braker Lane, Austin, Texas 78758, USA, call the Service Hotline at **1-800-288-5081** in the USA only or email at apservice@activepopwer.com. Purchaser must also provide us with any substantiation that we request, including proof of purchase, as a condition of receiving warranty service. Defective Products under this Limited Warranty shall be returned to Active Power postage prepaid.

During the Limited Warranty Period, if any Product (or part thereof) is found, upon inspection by Active Power, to be defective in material and workmanship, Active Power will provide a new Product or part (or a repaired Product or part, or functionally equivalent alternative, at its election) and will return the same to Purchaser, postage prepaid.

If Active Power testing and examination does not disclose a defect warranted hereby, Active Power shall so advice Purchaser and shall dispose of the Product in accordance with Purchaser's instructions and Purchaser shall reimburse Active Power for its expense in testing and examining such Product at Active Power's standard rates.

No claim for breach of warranty, or any other claim, in tort, contract, or otherwise, arising out of or related to Products, may be commenced more than one (1) year following the expiration of the Limited Warranty set out above or the accrual of the claim, whichever occurs first. Any such claim must be commenced in Texas and will be governed by Texas law.

All component parts removed under this Limited Warranty become the property of Active Power. Repaired or replaced Products shall be warranted hereunder for the remainder of the Limited Warranty Period or twelve (12) months from the date of shipment of the repaired or replaced Product, whichever is longer.

Active Power is not responsible for damage to, loss of, or disclosure of any programs, data, or removable storage media contained on any Product returned for warranty service, or for the post-service restoration or re-configuration of any Product.

Notwithstanding anything to the contrary contained herein, in the event that Purchaser purchased the Product from an Active Power authorized distributor ("Distributor"), Purchaser shall contact such Distributor to make any and all warranty claims hereunder, and Active Power reserves the right to contract with Distributor such that Distributor carries out certain or all of the Active Power specified obligations hereunder. In such event, Purchaser's sole recourse for such warranty services shall be from Distributor.

WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY

EXCEPT AS EXPRESSLY SET FORTH IN THIS LIMITED WARRANTY, ACTIVE POWER MAKES NO OTHER WARRANTIES WITH RESPECT TO ITS PRODUCTS AND SERVICES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERFERENCE OR PARTICULAR RESULTS.

THE REMEDIES OF PURCHASER SET FORTH UNDER THE PROVISIONS OF LIMITED WARRANTY OUTLINED ABOVE ARE THE SOLE AND EXCLUSIVE LIABILITY OF ACTIVE POWER WITH RESPECT TO THE PRODUCTS FURNISHED UNDER THE TERMS AND CONDITIONS OF SALE UNDER WHICH SUCH PRODUCTS WERE PURCHASED FROM ACTIVE POWER AND ANY RELATED WARRANTY SERVICES, WHETHER BASED ON CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE.

ACTIVE POWER SHALL IN NO EVENT BE LIABLE TO PURCHASER, ANY SUCCESSOR IN INTEREST OR ANY BENEFICIARY OR ASSIGNEE RELATING TO THE PRODUCTS FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, EVEN IF ACTIVE POWER WAS ADVISED OF OR SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF SUCH DAMAGES.

ANY IMPLIED WARRANTIES THAT MAY BE IMPOSED BY LAW ARE LIMITED IN DURATION TO THE LIMITED WARRANTY PERIOD. SOME JURISDICTIONS DO NOT ALLOW A LIMITATION ON HOW LONG AN IMPLIED WARRANTY LASTS OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR CERTAIN PRODUCTS. IN SUCH JURISDICTINS, SOME EXCLUSIONS OR LIMITATIONS OF THIS LIMITED WARRANTY MAY NOT APPLY TO PURCHASER.

Active Power’s maximum liability shall not exceed the purchase price paid for the Product upon which such liability is based.

Active Power reserves the right to elect, in its sole discretion, to give Purchaser a refund of Purchaser’s purchase price payments (less interest) instead of a repaired or replaced Product.

WARRANTY EXCLUSIONS

The Limited Warranty provided herein does not apply to equipment sold or furnished by Active Power but manufactured by others, as they are warranted by their respective manufacturers directly to the user, such as engine generators, switchgear and compressors.

This Limited Warranty does not apply to (i) failure occurring as a result of abuse, misuse, negligent repairs, repairs performed by non-Active Power certified personnel, corrosion, erosion, normal wear and tear, alterations or modifications made to the Product without the express written consent of Active Power; (ii) failure resulting from attachments, accessory items and parts not sold or approved by Active Power, damages arising from shipping, installation, accidents, tampering, vandalism or acts of God, (iii) failures resulting from any use or installation which Active Power judges improper, or failure to follow the recommended operating practices and maintenance procedures as provided in the Products operating and maintenance manuals; (iv) failures resulting from Purchaser’s failure to apply software or firmware updates made available by Active Power, or (v) any Product from which the serial number has been removed.

Active Power reserves the right to modify, alter and improve any part or parts without incurring any obligation to replace any part or parts previously sold without such modified, altered or improved part or parts.

No person is authorized to give any other warranty or to assume any additional obligation on Active Power’s behalf unless made in writing and signed by an officer of Active Power.

This Limited Warranty shall cease to apply if the Products are removed from the country to which they were originally shipped by Active Power.

PURCHASER RESPONSIBILITIES

Purchaser is responsible for providing timely notice of potential claims hereunder, and in no event more than seven (7) days of discovery of a potential Product problem. Purchaser is also responsible for any rigging and drayage necessary to move equipment to facilitate repair or to install replacement parts, local sales taxes if applicable, providing Active Power access to all electronically stored data in the Products, and any failures resulting from Purchaser's delay in making the Product available after being notified of a potential Product problem.

IF OTHERWISE APPLICABLE, THE VIENNA CONVENTION (CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS) IS EXCLUDED IN ITS ENTIRETY.

EXHIBIT D
INSURANCE

1. Workers' Compensation or Social Scheme and Employers Liability Insurance. Workers' Compensation Insurance shall be provided as required by any applicable law or regulation having jurisdiction over Supplier employees. If the jurisdiction has a Social Scheme, Supplier agrees to be in full compliance with the laws thereof. Employers Liability Insurance shall be provided in amounts not less than $1,000,000 USD each accident for Bodily Injury by accident and $1,000,000 USD each employee for Bodily Injury by disease. Where permitted by law, such policies shall contain waivers of the insurer's right of subrogation against HP, its subsidiaries, officers, directors and employees.

2. General Liability Insurance (aka "Public Liability" or "Civil Liability"). Supplier shall carry Commercial General Liability Insurance with limits of liability and coverage as indicated below:

    - Premises;
    - Operations;
    - Independent Contractors;
    - Products-Completed Operations;
    - Personal Injury;
    - Advertising Injury;
    - Liability Assumed under an Insured Contract

    Commercial General Liability (Occurrence) policy limits shall be not less than $1,000,000 per occurrence (combined single limit for bodily injury and property damage, $1,000,000 for Personal Injury Liability, $1,000,000 Aggregate for Products and Completed Operations, and $2,000,000 General Aggregate). HP, its subsidiaries, officers, directors and employees shall be named as Additional Insureds under the policy. It is agreed the insurance afforded such Additional Insureds shall apply as primary insurance and that any other insurance carried by HP shall be excess only and shall not contribute with this insurance. If "claims made" policies are provided, Supplier shall maintain such policies, including unimpaired aggregate limits at the above stated minimums, for at least three years after the expiration of the Term.

3. Automobile Liability Insurance. Such insurance shall include coverage for Bodily Injury and Property Damage Liability, including Automobile Contractual Liability and shall apply to all owned, hired, and non-owned autos. The limit of liability shall not be less than $1,000,000 combined single limit for each accident.

4. Certificate of Insurance. Upon HP request, Supplier shall furnish Certificates of Insurance acceptable to HP before any Services are commenced or Deliverables are delivered hereunder by Supplier.

5. General. All insurance policies will be written by a company authorized to do business in the territory and jurisdiction where the project is located. In no event will the coverage or limits of any insurance maintained by Supplier under this Exhibit, or the lack or unavailability of any other insurance, limit or diminish in any way Supplier's obligations or liability to HP under this Agreement. Any acceptance of insurance certificates by HP shall not limit or relieve Supplier of the duties and responsibilities assumed by it under this Agreement.

EXHIBIT E
GENERAL SAFETY AND SECURITY POLICIES

1. SECURITY - Supplier personnel must obtain and wear proper identification badges in order to go unescorted on HP property. Badges may be obtained through the HP Project Manager. The HP Project Manager will arrange for badges to be available from Security and may be picked up at the appropriate lobby.

2. WORK AREAS - Unless called for by special conditions, Supplier workers are expected to confine their activities to the immediate job site and necessary access.

3. PARKING AND STORAGE SPACE - Parking space for Supplier vehicles and areas for the storage of materials, equipment, and debris will be specified by the HP Project Manager.

4. LOANING OF EQUIPMENT - As a general rule, the Supplier will provide his own tools and equipment. In circumstances where it may be expedient to borrow HP equipment, an Equipment Loan Agreement is completed and approved by the HP Project Manager.

5. FIRST AID - Suppliers are expected to comply with OSHA regulations as far as first aid for their own personnel is concerned. Supplier's people may obtain minor first aid treatment from the nearest available HP nurse. Supplier's employees are also expected to report injuries to their own Supervisor who will arrange further treatment on the outside if needed.

6. PERSONAL PRACTICES - The use of alcohol or unauthorized drugs on HP property is strictly prohibited. Horseplay, skylarking and similar unsafe behavior is prohibited on HP property.

7. ACCIDENT INVESTIGATION - All accidents on HP property involving Personnel will be investigated jointly by the Supplier and HP Project Manager. Evidence of the accident will be carefully preserved.

8. INSTRUCTION OF HP PERSONNEL - When construction conditions expose HP employees to special hazards, the HP Project Manager will advise the HP Safety Staff as to the need for instructing employees in the area on any special precautions that need to be observed.

9. INSTRUCTION OF SUPPLIER PERSONNEL - Normally, giving of safety instructions to the Supplier's workers is the responsibility of their own Supervisor. However, the HP Project Manager may request the HP Safety Staff to review special hazards that may exist and to advise the Supplier to issue appropriate instructions to all Personnel involved.

10. PERIODIC INSPECTIONS - Supplier is expected to perform frequent inspections of the job for the purpose of detecting and correcting unsafe conditions and practices. Depending on the size of the job, the HP Project Manager and members of the HP Safety Staff will reserve the right to survey the job site on HP or Customer property for the purpose of evaluating safety conditions and practices.

11. SAFETY EQUIPMENT - As the employer, Supplier is responsible for providing for its workers whatever safety appliances are needed to safely perform the Services.

EXHIBIT F
DRUG TESTING AND BACKGROUND CHECKS

The term "***Covered Individual***" as used in the following paragraphs, means any employee, agent or Subcontractor of the Supplier who is expected to, or who does perform Services under this Agreement at any Site.

1. Drug Testing

1.1. Supplier shall certify that each of its Covered Individuals is "drug free". Supplier shall not assign any person to HP in violation of this certification requirement.

1.2. As used in this certification, "***drug free***" shall mean that the Covered Individual shall have passed a drug screen within one month prior to performing services under this Agreement. Supplier will use a reputable drug screening laboratory to perform the tests, which shall include screening for and at the cut off levels set for the five classes of drugs identified by the Substance Abuse and Mental Health Services Administration (SAMSHA). [Generally: Cannabinoids, Cocaine, Opiates, Phencyclidine, and Amphetamines].

2. Background Checks

2.1. Supplier shall conduct a background check on all Covered Individuals within one month prior to performing any services under this Agreement.

2.2. The background check shall include, at a minimum:

2.2.1. Criminal background check for the past 7 years (or for a lesser time period if restricted by law);

2.2.2. Driving record for the past 3 years (or for a lesser time period if restricted by law) if driving is a requirement of the Covered Individual's job assignment.

2.3. The criminal background check must be performed in all cities, counties, states and federal court jurisdictions where the Covered Individual resided or worked during the specified time period. Both felony and misdemeanor records must be checked.

2.4. Supplier shall not assign any person to perform Services under this Agreement who has been convicted of a crime that is job related or would present safety or security risks.

2.5. Individuals with a conviction(s) for any of the following crimes should not be assigned to perform services under this Agreement: crimes against persons; crimes involving weapons, explosives or arson; crimes involving the use/misuse of a computer/network; crimes involving trade secret/proprietary information theft, burglary, theft, embezzlement, corruption, bribery, forgery, fraud, receiving stolen property; or crimes involving the possession, manufacture, transportation or sale of illegal drugs and controlled substances.

2.6. Any other consideration discovered during the background check that would be a potential business concern should be communicated to the HP Program Manager before utilizing such person.

3. Subcontracted Services

3.1. Should any portion of the Services be subcontracted, Supplier shall ensure the same tests and checks are performed by its Subcontractors.

EXHIBIT G
CHANGE ORDER FORM

Change Order Form	
HP Agreement # <Insert> Date of Relevant SOW: <Insert>	Change Request# <Insert>
Requestor: <Insert> Position: <Insert>	Change Request Date: <Insert>
Change Priority: <High, Medium, Low>	Desired Change Start Date: <Insert>
Change Request	
(a) Describe requested change to Services and/or Deliverables. Specify impact on price, schedule, delivery requirements, staffing, payments and/or acceptance criteria.	
(b) For Supplier initiated changes, also provide justification for the proposed change, explanation of benefit to HP and impact (if any) should HP choose not to implement the proposed change.	
Approval	
Change Order Approved and Accepted: **Active Power, Inc.** By: ______________________ Name: ______________________ Title: ______________________ Date: ______________________	 **HP** By: ______________________ Name: ______________________ Title: ______________________ Date: ______________________

EXHIBIT H
HP GLOBAL TRADE REQUIREMENTS

1. **General**. This document may not be modified by any addendum, exhibit, attachment, or any other agreement without prior written approval from HP Global Trade.

2. **Technology Letter of Assurance**. Supplier assures that it, and/or Personnel, coming into contact with HP Restricted technology in the performance of Services, will not export, release or transfer by any means or method any HP Restricted technology, consisting of technical data and technical assistance, the direct product of such restricted technical data and technical assistance, software and the source code for such software, obtained by Personnel under this Agreement, to certain controlled countries and the nationals of such countries identified in country groups D:1, E:1 and E:2, as identified in Supplement No. 1 to Part 740 of the U.S. Export Administration Regulations (See http://www.access.gpo.gov/bis/ear/pdf/740spir.pdf) without having first obtained any required government authorization.

3. **Screening.** Supplier shall be fully responsible for the "screening" of its transactions, and sub-contractors, component suppliers, vendors and all other third parties who may assist Supplier in fulfilling its responsibilities under this Agreement. Supplier will exercise commercially reasonable care and due diligence to ensure such third parties are not knowingly:

   a. Identified as, or engaged in, prohibited nuclear, missile, chemical or biological weapons of mass destruction end users or end uses, respectively.

   b. Associated with circumstances and/or engaged in activities such as to suggest a risk of illegal diversion to an unauthorized party.

   c. Requiring Supplier to accept prohibited Boycott terms or conditions.

   d. Located in a US or UN Embargoed country.

   e. Subject to U.S. and other national government trade sanctions or controls, such as, but not limited to, those reflected in the U.S. lists of the entities of such parties promulgated in or as a:

      i. Denied Persons List; The Entity List; and the Unverified List (Bureau of Industry and Security, U.S. Department of Commerce)

      ii. Specially Designated Nationals and Blocked Parties List (Office of Foreign Assets Control, U.S. Department of Treasury)

      iii. The List of Debarred Parties; United Nations Security Council Embargoed Persons and Entities (Directorate of Defense Trade Controls, U.S. Department of State).

      iv. Designated Foreign Terrorist Organization (Office of Coordinator for Counterterrorism, U.S. Department of State)

      v. Parties Engaged in Prohibited Proliferation Activities (Bureau of Nonproliferation, U.S. Department of State).

4. **Services**. Supplier warrants that: (i) the products, software, technology, and other materials provided under this Agreement are subject to U.S. and other national governments and agrees to assume responsibility for complying with Applicable Laws including but not limited to laws and regulations governing transfer of products to users subject to the U.S. and other government sanctions, and for obtaining required export, re-export, in-country transfer, and import authorizations. Supplier agrees that before releasing, transferring, or exporting any products, software, technology, technical data or technical assistance to Country Groups D:1, E:1 and E:2 as identified in Supplement No. 1 to Part 740 of the U.S. Export Administration Regulations (see http://www.access.gpo.gov/bis/ear/pdf/740spir.pdf): (i) Supplier will obtain any required US government authorization; and (ii) if any such restricted software, technology, technical data or technical assistance is provided by HP, Supplier will obtain written authorization from HP.

5. **Record Keeping**.

a. Each Supplier site must maintain a system for retention, retrieval and reproduction of original shipping, export and import and other trade-related documentation ("Trade Control Records") pertaining to the international transport of HP commodities, software, and technology ("Items") to the Supplier, as well as records pertaining to the screening of Personnel deployed to work at a site. This record-keeping system shall be required for six calendar years from the acceptance date for Services or from the date of each shipment or transmission. Such record keeping system will comport with the legal requirements of the U.S. and other nations including, but not limited to, requirements set out in Parts 762 and 772, U.S. Department of Commerce, Export Administration Regulations.

b. Supplier, upon receipt of written notice from HP, will collect, reproduce if required, and provide to HP (at Supplier's expense) originals and/or satisfactory copies of 100% of the Trade Control Records as HP may request. All HP requests for Trade Control Records must be fulfilled within 10 business days of HP's written request, or the response date required by an official government record production request or subpoena, which ever is the lesser time for response. Supplier will not destroy or render inaccessible any of the Trade Control Records relating to HP transactions, without having first obtained the express written permission from HP.

6. **Trade Control Records as HP may request**. All HP requests for Trade Control Records must be fulfilled within 10 business days of HP's written request, or the response date required by an official government record production request or subpoena, which ever is the lesser time for response.

7. **Shipping Documentation Requirements**. All text must be in English and all monetary amounts must be represented in US dollars. If it is required by any applicable law to have the documentation in any other language, then an English translation shall be provided and the English version documentation shall prevail over such other language documentation.

Exhibit 10.25

HARDWARE PRODUCT PURCHASE AGREEMENT

AGREEMENT NO. ___________

This Hardware Product Purchase Agreement is entered into as of the 15th day of March 2010 ("Effective Date") by and between Hewlett-Packard Company, a Delaware corporation having its principal place of business located at 3000 Hanover Street, Palo Alto, California 94304 ("HP"), and Active Power Inc. ("Supplier"), organized and operating under the laws of Delaware with its principal place of business at 2128 W. Braker Lane, BK 12, Austin, Texas 78758. HP and Supplier are collectively referred to in this Agreement as the "Parties".

The Parties agree:

This Hardware Product Purchase Agreement includes this cover page and HP's Standard Business and Legal Terms (collectively, "Standard Terms"), and the Modules set forth below, all of which are attached hereto ("Agreement"). Unless a Module specifically refers to and expressly states that it is amending the Standard Terms, the Standard Terms control and take precedence over all conflicting and inconsistent terms in a Module.

Product Description, Product Specifications, and Pricing
Product Returns and Non-Conforming Product
Insurance Requirements
Notices

☐ Additional Ordering and Shipping Terms
☐ Engineering Process and Design Changes
☐ Quality and Compensation
☐ Service and Support Requirements
☐ Discontinuance of Product and HP's Manufacturing Rights
☐ Assurance of Supply and Flexibility Agreement
☐ Eligible Purchasers
☐ Product Customization
☐ Third Party and Open Source Software Components
☐ Additional Supplier Obligations

1. Purpose. Supplier wishes to sell, and HP and Eligible Purchasers listed in the Eligible Purchasers Module if attached, wish to purchase Product upon the terms and conditions stated in this Agreement. "Product" means hardware (i.e., tangible goods, components, or materials) and includes any accompanying Software, Documentation and any associated Services. Software and Documentation are defined in these Standard Terms. Products may be described in more detail as set forth in Section 2 entitled "Payment* in the Standard Terms.

2. Term of Agreement. This Agreement begins as of the Effective Date and continues for three (3) years with automatic renewals for successive one year periods, unless terminated as specified in the Section entitled "Termination" In the Standard Terms.

3. Entire Agreement. This Agreement comprises the entire understanding between the Parties with respect to the subject matter hereof and supersedes any previous or contemporaneous communications, representations or agreements, whether oral or written, with respect thereto; provided that any separate confidentiality agreement between the Parties will continue unchanged and in full force and effect according to its terms. For purposes of construction and interpretation, this Agreement will be deemed to have been drafted by both Parties, and no ambiguity will be construed in favor of, or against, either Party.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement by their respective authorized representatives.

AGREED TO:	**AGREED TO:**
Signature Date: 8-11-2010	Signature Date: 4-30-2010
Active Power, Inc.	**Hewlett-Packard Company**
(Supplier)	(HP)
/s/ Martin Olsen	/s/ Colin Todd
(Signature)	(Signature)
Martin Olsen	Colin Todd
(Typed Name)	(Typed Name)
VP, Global Channels	VP ISS Supply Chain
(Title)	(Title)

HARDWARE PRODUCT PURCHASE AGREEMENT

HP's Standard Business and Legal Terms.

This Module contains HP's Standard Business and Legal Terms and forms part of the Hardware Product Purchase Agreement,

1. Ordering. Each sale and purchase of Product under this Agreement will be initiated by an Order. Acknowledgement (or rejection) must be received within two Business Days or the Order will be deemed an Accepted Order. Additional or contradictory terms in the Acknowledgement are void. Other than Product specified in an Accepted Order, nothing in this Agreement, including but not limited to forecasts, obligates HP to purchase any minimum quantity of Product if Supplier is unable to meet the Delivery Date, any quantity of corresponding Product may be purchased from other sources, and applied toward purchase obligations for Accepted Orders. Any Order or Acknowledgment issued during the Term will remain in full force and effect arid governed by this Agreement, even if the Agreement expires or terminates prior to Delivery.

2. Payment. Unless otherwise changed in a Module, HP and HP Eligible Purchasers will issue payment [*] ("Payment Issue Date"), Early payment discount (if any) will be calculated from the Payment Issue Date. Payment will be in U.S. currency unless otherwise stated. Product and prices for Product may be set forth in (1) the Product Description, Product Specifications and Pricing Module, or (2) in a written notification (email) or an electronic Request For Quote process that identifies (i) the Product, (ii) the pricing for Product and (iii) this Agreement. HP may require Supplier to submit invoices electronically at Supplier's sole expense. HP may utilize a third party, at HP's Sole discretion, to facilitate HP's order and invoicing processes that may entail disclosure of information about the purchasing relationship between HP and the Supplier. For orders containing more than one unit, supplier will be able to bill at the shipment of each unit unless requirement is for the total solution to be delivered at the same time. If this total order is greater than $1 Million, and must be delivered to HP as a solution, HP and supplier will review payment terms and negotiate as necessary.

3. Taxes. Prices are exclusive of sales and use tax, VAT, GST and other similar taxes. Such taxes, if applicable, shall be added separately to Supplier's invoice, and HP will remit such taxes to Supplier. Supplier will not invoice or otherwise attempt to collect from HP any taxes with respect to which HP has provided Supplier with (i) a valid resale or exemption certificate, (ii) evidence of direct payment authority, or (iii) other evidence, reasonably acceptable to Supplier, that such taxes do not apply. HP will not be responsible for any taxes measured by Supplier's net income, taxes measured by Supplier's costs in providing the Product or Services, or taxes imposed through withholding. For the avoidance of doubt, any such taxes incurred as a cost by Supplier are included in the price. If HP is required by law to withhold and remit tax relating to a purchase under this Agreement, HP shall be entitled to reduce its payment by the amount of such tax.

4. Product and Compliance Warranties, Remedies and Related Terms.

4.1 Product Warranties. Supplier represents and warrants that at Product will: (a) be manufactured, processed, and assembled by Supplier or Suppliers authorized Subcontractors; (b) conform to Product Specifications; (c) be new; contain first-quality components, raw materials and parts; (d) be free from defects in design, material and workmanship; (e) be free and clear of all liens, encumbrances, restrictions, and (f) other claims against title or ownership. Additionally, Suppliers' representations and warranties in any Modules attached to this Agreement apply in accordance with their terms. Such Modules may include, without limitation, the following, Service and Support Requirements, Quality and Compensation, and Engineering Process or Design Changes. Except for the Product Intellectual Property Warranties set forth in Section 5 below, which survive indefinitely, all other warranties specified in this paragraph survive Delivery, inspection, acceptance or payment by HP and will be in effect for the longer of (1) 12 months following acceptance or (2) the warranty period stated in a Module to this Agreement. The foregoing warranties will not apply to any Product to the extent such Product does not function properly as a result of improper installation. repair, alteration, modification, misuse, abuse, negligence or accident, unless caused by Supplier or Supplier's Subcontractors.

4.2. Product Warranty Remedies. If Supplier breaches any warranty HP may return the affected Products to Supplier at Supplier's expense for correction, replacement, or refund, as HP may direct, in addition to other remedies available to HP. Additionally, remedies in any Module attached to this Agreement apply. Any Product corrected or furnished in replacement will be warranted for the remainder of the warranty period of the Product replaced.

4.3. Supplier Compliance Warranties. Supplier represents and warrants that it and its authorized Subcontractors will comply with all Applicable Law and regulations in performance of this Agreement, including but not limited to (a) laws and regulations governing freedom of association, labor and employment, employee health and safety, protection of the environment, and ethical practices, and (b) all applicable national and international transportation requirements including, where applicable, regulations regarding chemicals and hazardous materials, dangerous goods, or fumigation and aeration. Additionally, Supplier represents and warrants that it will comply with the following HP requirements located at haps://h20168.www2.hp.com/supplierhandtiook/FMF87804.odt Trade and Logistics; Personal Data Use and Protection, if applicable; Confidential Information; Governmental Compliance; and Social and Environmental Responsibility.

4.4. Product Safety. If Supplier becomes aware that any Product under this Agreement involves a risk of injury (or death) to persons, or risk of damage to property, Supplier will, within twenty-four (24) hours, provide written notice to HP which includes a written description of the nature and extent of such risk, including a description of any precautions which should be taken to minimize risk. If the Engineering Process or Design Changes Module is attached to this Agreement, Supplier will also follow the procedures set forth in that Module.

4.5. Product Recalls. Unless otherwise specified in a Module attached to this Agreement, HP may perform a recall of Product, or of HP Product containing Product, (a) if Supplier breaches its warranties: or (b) to prevent or remedy any health or safety risk arising from such Product. Supplier will reimburse HP's losses, liabilities, costs, including, but not limited to, notification costs, return costs, cost of field recall, freight, labor cost, and rework incurred in effecting any product recall. Supplier is not liable for recall costs to the extent the cause of recall is due solely to compliance with HP Specifications.

5. Product Intellectual Property Warranties and Remedies.

5.1. IP Warranties. Supplier represents and warrants that (1) to the best of Supplier's knowledge the Product and use thereof does not infringe or misappropriate any third-party Intellectual Property Rights, that Supplier is unaware of any such claim of infringement, and that Supplier will not knowingly add new functionality to Product that infringes; (ii) HP does not and will not need to procure any rights or licenses to any third party's Intellectual Property Rights to exploit the Product; (iii) the Software does not contain any virus or harmful code, will not activate, alter or erase without control of a person operating the computer equipment on which the Software resides, and does not contain functionality that restricts access or use (other than a license key); (iv) Supplier will pass through to HP the benefits of all transferable warranties applicable to any third party software acquired by HP from Supplier; (v) Supplier complies with and will continue to comply with all licenses (including, without limitation, all open source licenses) associated with any Software component included in the Product; and (vi) there are no patent markings on any part of the external housing of the Product. If Supplier breaches any of these Intellectual Property warranties, then in addition to HP's remedies specified in this Agreement, HP may immediately cancel any unfilled Accepted Orders without liability.

5.2 Remedies for Infringing Product. If a Product is alleged to infringe a third party's Intellectual Property Rights and its use, manufacture, sale, combination, or importation is enjoined, Supplier will, at its sole expense and option: procure for HP the right to continue using or combining the Product, as the case may be; replace the Product with a non-infringing product of equivalent function, form and performance; or modify the Product to be non-infringing, without materially detracting from function, form or performance.

6. Services and Support Warranty. In addition to the warranties applicable to Product, Supplier represents and warrants that all Services will be provided in a professional and workmanlike manner by experienced personnel with suitable expertise in the subject matter. Supplier will comply with the obligations stated in the Service and Support Requirements Module if attached to this Agreement. Unless otherwise specified in the Services and Support Requirements Module, Supplier's obligations to provide Services and Support Requirements will continue throughout the Term and for five (5) years after the last Delivery of Product even if (I) the subject Product is discontinued, (ii) this Agreement is terminated or expires, or (iii) HP notifies Supplier that HP is ending its purchases for a Product.

7. Licenses.

7.1. Licenses to Software. Supplier hereby grants to HP, a nonexclusive, worldwide, irrevocable, perpetual, fully paid-up license to use, reproduce, and distribute Software with Product or HP Products. The rights granted herein include the right to use and distribute updates to such Software directly with the Product or indirectly (without the Product) to end users of the Product. If any Software is licensed from a third party or subject to a third party license (including, without limitation, open source software), Supplier will identify each software component and identify the corresponding third party license in a Module to this Agreement entitled 'Third Party and/or Open Source Software Components". If any Software is subject to a license that requires distribution of source code (e.g., the GNU General Public License ("GPL'), the GNU Lesser General Public License ("LGPL")), Supplier will provide HP the required source code. The rights granted in this section will extend to Eligible Purchasers, HP Subsidiaries, Affiliates, third party channels of distribution and contractors performing services pertaining to the Product or HP Product.

7.2. Licenses to Product Documentation. Supplier hereby grants HP a non-exclusive, perpetual, irrevocable, worldwide, fully paid-up license to use, reproduce, distribute and prepare derivative works (in HP's name) all Documentation and other information, other than Confidential Information, furnished by Supplier under this Agreement for purposes of distribution with, or in connection with the sale or support of, HP Product. HP may reproduce such Documentation without Supplier's logo or other identification of source, subject to affixing Supplier's copyright notices to all copies of Documentation. The rights granted in this section will extend to Eligible Purchasers, HP Subsidiaries, Affiliates, third party channels of distribution and contractors performing services pertaining to the Product or HP Product.

8. Defense and Indemnity.

8.1. Supplier's Obligations. Supplier will defend, indemnify and hold harmless HP, HP Subsidiaries and Affiliates, Eligible Purchasers and each of their respective customers (including without limitation end users, distributors and resellers), officers, directors, employees, agents and representatives ("Indemnitees") from and against any and all claims, demands, causes of action, lawsuits or liabilities (collectively "Claims") arising out of or related to (i) (a) any negligent act, omission, willful misconduct, or breach of Agreement by Supplier, its Subcontractors, employees, or agents, or (b) tangible property loss, personal injury or death caused by Supplier, its Subcontractors, employees, or agents or by any Product, or (ii) the unauthorized use, misappropriation or infringement of any third party's Intellectual Property Rights by (a) any Product; (b) any combination of the Product with an HP Product where the Product has no substantial non-infringing use, (c) any Software, (d) any Documentation, (e) a Supplier Mark, (f) anything provided as part of Supplier's Support, or (g) use of any of (ii)(a) through (f). Supplier will pay all claims, losses and damages, liabilities, judgments, awards, costs and expenses including reasonable attorneys' fees, expert witness fees and bonds incurred by Indemnitees as a result of the Claim, and will pay any award in connection with, arising from or with respect to any such Claim, including any settlement.

8.2. HP's Duty to Notify and Tender Claims To Supplier. HP will give Supplier prompt notice of any Claim. HP will provide Supplier the authority, information, and assistance (at Supplier's expense) reasonably necessary to defend. Supplier will control defense. HP and any other Indemnitee may, in its or their discretion, participate in the defense of such Claim at their own expense. However, if Supplier does not diligently pursue resolution of such Claim, then HP may, without in any way limiting its other rights and remedies, defend the Claim and collect its costs of doing so from Supplier. Any settlement or compromise Supplier desires to enter into will be subject to HP's prior approval and will include a full and complete release of any and all claims that the third party claimant may have against Indemnitees.

9. Limitation of Liability. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, PROFITS OR REVENUE, COST OF CAPITAL OR DOWNTIME COSTS), ARISING OUT OF THIS AGREEMENT REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, UNLESS SUCH DAMAGES ARE EXPRESSLY PROVIDED ELSEWHERE IN THIS AGREEMENT. NOTHING IN THIS SECTION EXCLUDES, DISCLAIMS, LIMITS OR OTHERWISE AFFECTS EITHER PARTY'S LIABILITY FOR PERSONAL INJURY, DEATH, PHYSICAL DAMAGE TO PROPERTY, OR BREACH OF ITS CONFIDENTIAL INFORMATION OBLIGATIONS OR SUPPLIER'S LIABILITY FOR BREACH OF ITS PERSONAL DATA USE AND PROTECTION OBLIGATIONS OR SUPPLIER'S DEFENSE AND INDEMNITY OBLIGATIONS

10. Access to Information Systems. Supplier may be granted access to HP's information systems in the manner and to the extent determined by HP. HP may require Supplier's employees, Subcontractors or agents to sign individual agreements to access HP's information systems. Unauthorized use of HP information systems is expressly prohibited. Access is subject to current HP business control and information protection policies, standards and guidelines.

11. HP Property. HP may loan to Supplier HP Property solely for use in Supplier's manufacturing, testing or adapting Product or to provide Services and Support. All HP Property will be identified as the sole property of HP. HP Property may not be transferred, assigned, loaned or otherwise encumbered by Supplier in any way. HP Property may be loaned to third parties for fulfillment of Supplier's obligations hereunder only upon HP's prior written consent. If such consent is provided, Supplier assumes all responsibility and liability for the HP Property while in the possession of such third parties. Supplier will return, at its expense, HP Property in good condition, reasonable wear and tear excepted, upon HP's request or upon termination or expiration of this Agreement. Prior to HP Property being loaned to Supplier, Supplier will execute HP's loan agreement

12. Business Continuity. Supplier will have a current BRP and will make such BRP available to HP upon request. Supplier is responsible for maintaining its operations and all facilities, including without limitation factories, hubs, warehouses, and storage facilities in accordance with its BRP and safety, security, and fire protection industry standards. A Production Failure constitutes a Default entitling HP to terminate this Agreement. Alternatively, at H P's option and request, upon the occurrence of a Production Failure Supplier will: (a) implement its BRP, (b) furnish HP, at HP's expense, resources, tools, personnel and other materials necessary to assure continued production and delivery of Products; (c) assist HP in transitioning, within two (2) business days, all tools, components, loaned equipment, technical manufacturing information, work-in-progress, inventory or other materials necessary for the manufacture and production of Products to an alternative manufacturing facility of HP's choice, and (d) redirect and rebalance all inbound components and materials to such alternative facility.

13. Notices. All notices required to be given under this Agreement will be in writing and will be sent to the respective addresses set forth in the Notices Module, or such other address as each Party may designate by notice given in accordance with this Section, except for HP's email notifications to Supplier for content changes at HP's website references stated in this Agreement. HP reserves all rights, from and after the Effective Date of this Agreement, to revise, withdraw or otherwise modify ("Change") the contents of any website referenced in this Agreement Supplier will be required to comply with all such Changes within ten Business Days after transmittal of email notice thereof. If Supplier does not accept such Change, Supplier will provide written Notice of non-acceptance. HP must receive Notice of non-acceptance within nine Business Days after HP has provided Supplier notice of such Change, or Supplier will be deemed to have accepted such Change.

14. Force Majeure. Neither Party will be liable for any delay in performance because of a Delaying Cause. Each Party will give prompt notice of the Delaying Cause to the other, along with its best estimate of the Delaying Cause's duration. An affected Party will exercise reasonable diligence to overcome the Delaying Cause and to mitigate its effects. HP may terminate without liability any Accepted Orders after notice from Supplier of a Delaying Cause without loss of eligibility for, or entitlement, to pricing hereunder. The Parties will resume performance once the Delaying Cause ceases; however if a Delaying Cause delays Supplier's performance for a cumulative period of fourteen (14) calendar days or more, HP may terminate this Agreement and/or any Order without liability by notice to Supplier. Notwithstanding anything to the contrary in this Agreement, no Delaying Cause will excuse timely performance of any of the following obligations: Confidential Information, Product Intellectual Property Warranties, and Defense and Indemnity.

15. Termination. Either Party may terminate this Agreement upon Default by the other Party as stated in Section 16 (Default). In addition, HP may terminate this Agreement without cause or liability upon ninety (90) days prior written notice. HP will accept delivery of, and pay for, Accepted Orders entered prior to termination, unless canceled as set forth in this Agreement. HP will purchase all packaging, dies and other goods bearing HP Marks and other tangible property specially purchased by Supplier, with HP's prior written approval, to enable Supplier's performance under this Agreement which Supplier cannot otherwise use In its business; provided that Supplier will mitigate to the maximum extent feasible. Unless otherwise provided in a Module to this Agreement, in no event will HP be liable for non-recurring engineering costs and expenses incurred by Supplier in developing or producing Product.

16. Default. A Party will be in Default if: (a) any representation or warranty made by such Party in this Agreement is false in any material respect; (b) it breaches any provision in this Agreement and fails to cure such breach within thirty (30) days after receipt of Notice; however, such cure period will not be available if the breach is not capable of being cured; (c) it is the subject of a proceeding, whether voluntary or involuntary, in bankruptcy, reorganization, or insolvency, or other similar law of any jurisdiction, or (d) a receiver, trustee, or an assignee for the benefit of creditors is appointed. In addition to any other remedies available to it, the Party not in default may terminate this Agreement or any Accepted Order upon written notice to the other Party.

17. Miscellaneous.

17.1 No Publicity. Supplier will not publicize or disclose the terms or existence of this Agreement, nor will Supplier use the name(s), trademark(s), or trade name(s) of HP, HP Subsidiaries or HP Affiliates, except as follows: (i) with the prior written consent of HP; or (ii) as authorized by law.

17.2 Independent Contractors. The relationship established under this Agreement is that of independent contractors, and neither Party is a partner, employee, agent or joint venturer of or with the other. Nothing in this Agreement precludes HP from independently developing, manufacturing, selling or supporting products similar to Product.

17.3 Assignment. Neither Party may assign or transfer this Agreement or any right, license, privilege or obligation provided herein or in any

Accepted Order without the other Party's prior written consent, and any attempted assignment or transfer without consent is void. Any merger, consolidation, reorganization, transfer of all, substantially all, or a material portion of the assets of a Party, or other change in control or ownership, even if any of these events occur by operation of law, will be considered an assignment for purposes of this Agreement. This Agreement will inure to the benefit of and will be binding on the permitted successors and assigns of the Parties.

17.4 No Waiver. A Party's failure to exercise or delay in exercising any of its rights under this Agreement will not constitute a waiver, forfeiture, or modification of such rights. A Party's waiver of any right under this Agreement will not constitute a waiver of any other right under this Agreement or of the same right on another occasion. Any waiver must be in writing and signed by the waiving Party.

17.5 No Third Party Beneficiary. This Agreement does not create any third party beneficiaries.

17.6 Severability. If any provision in this Agreement is held invalid or unenforceable by a body of competent jurisdiction, such provision will be construed, limited or, if necessary, severed only to the extent necessary to eliminate such invalidity or unenforceability. The Parties will negotiate a valid, enforceable substitute provision that most nearly effects the Parties' original intent in entering into this Agreement or provide an equitable adjustment in the event no such provision can be added. All other provisions of this Agreement will remain in full force and effect.

17.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument binding on all the signatories thereto.

17.8 Authority of Signatory. If this Agreement is signed by an agent or representative of a Party, such agent or representative Individually warrants and represents that he or she is authorized to execute this Agreement on behalf of, and bind, such Party.

17.9 Survival. The following provisions survive expiration or termination of this Agreement or any Accepted Order: Product and Compliance Warranties, Remedies and Related Terms: Product Intellectual Property Warranties and Remedies; Services and Support Warranty; Licenses: Defense and Indemnity; Limitation of Liability; Miscellaneous; Definitions and any Modules to the extent so indicated in such Module.

17.10 Governing Law. This Agreement will be governed by and Interpreted in accordance with the laws of the state of New York without regard to its conflict of laws provisions. The Parties exclude application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

1. Definitions.

"**Accepted Order**" means an Order to which a Party has issued its Acknowledgement.

"**Acknowledgment**" means a written or electronic confirmation of an Order.

"**Affiliates**" means an entity whose voting shares are owned less than fifty percent but at least ten percent by a Party to this Agreement.

"**Applicable Law**" means all constitutions, laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, and legally binding requirements of all federal, state and local governmental authorities applicable to any Party's performance under this Agreement.

"**BRP**" means a business recovery plan detailing Supplier's strategies for recovery from physical or financial disasters that could disrupt operations and timely delivery of Product.

"**Business Days**" means a day other than a Saturday, Sunday, or a day on which commercial banks are closed in the location at which performance of an act or obligation under this Agreement is to occur.

"**Delaying Cause**" means a cause not attributable to a Party and beyond its reasonable control, including without limitation fire, flood, or other acts of God, war, embargo, riot or an unforeseeable intervention of any government authority, which causes complete business interruption. A Delaying Cause does not include business decisions, economic inefficiencies, material shortages, or delays because of transportation, manufacturers, or Subcontractors.

"**Delivery**" means arrival of Product at the receiving area designated in the Order.

"**Delivery Date**" means the date of Delivery specified in an Order.

"**Documentation**" means the technical documentation that Supplier provides with, or makes available in connection with, Product. "HP Products" means the HP products or systems that include or incorporate Products.

"**HP Property**" means all property Including without limitation models, tools, equipment, copies of designs and documentation and other materials that may be furnished to Supplier by HP or on HP'S behalf or separately paid for by HP for use by Supplier in connection with this Agreement or any Order.

"**HP Specifications**" means technical and functional requirements provided by HP, or created for HP at HP's direction.

"**Intellectual Property**" means any ideas, whether or not patentable, inventions, discoveries, processes, designs, works of authorship, names, know-how and other such items for which Intellectual Property Rights may be secured.

"**Intellectual Property Rights**" means any and all rights in Intellectual Property on a worldwide basis, including any rights in patents, inventor's certificates, utility models, copyrights, moral rights, trade secrets, mask works, and Marks.

"**Mark**" means any trademark, service mark, trade dress, trade name, logo or other mark identifying a party or its products.

"**Module**" means a document containing additional terms attached as an exhibit to these Standard Terms and made part of this Agreement.

"**Order**" means (i) an order issued by HP, Eligible Purchaser or Supplier whether in written or electronic form, or, (ii) an order issued pursuant to any applicable supplier managed inventory ("SMI") process agreed by the Parties in writing.

"**Product Specifications**" means Documentation and HP Specifications.

"**Production Failure**" means Supplier's inability to continue production of products or meet delivery dates in the absence of a Delaying Cause.

"**Services**" means any service to be provided under this Agreement.

"**Software**" means all object code, firmware, embedded code, microcode and executable files that are contained in or distributed with Product, including all updates and upgrades thereto.

"**Subcontractor**" means a third party under contract to Supplier in connection Supplier's obligations under this Agreement.

"**Subsidiaries**" means an entity controlled by, or under common control with, a Party to this Agreement, through ownership or control of fifty percent or greater of the voting power of the shares or other means of ownership or control, for as long as such ownership or control exists.

"**Term**" means the time period specified in Section 2 of the Cover Page.

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Additional Ordering and Shipping Terms

This Module contains additional provisions related to Ordering and Shipping of Product and forms part of the Hardware Product Purchase Agreement.

1. Blanket Purchase Orders. In addition to Orders, HP or Eligible Purchasers may issue a blanket purchase order. Blanket purchase orders do not represent a commitment by HP or the Eligible Purchaser to buy any, or all, of the Product indicated. Blanket purchase orders will include the quantity and part number of the Product. A blanket purchase order will be used for fulfillment purposes until the earlier of the expiration of such blanket purchase order or depletion of the quantity or dollar limit for the Products under such blanket purchase order.

2. Forecasts. HP may provide a rolling forecast of projected Orders. Forecasts are estimates only and do not constitute a commitment by HP to purchase any such quantity. HP may revise any forecasts in its discretion. Upon receipt of HP's forecast, Supplier will, within five (5) Business Days, either confirm to HP that Supplier can support the forecast or not

3. Inventory Requirements. HP may request Supplier to deliver Product either through a non-Supplier Managed Inventory ("Non-SMI") process or to use an SMI process.

4. Order Changes. HP and Eligible Purchaser may, without charge, postpone, decrease or increase any Accepted Order by notice to Supplier; provided that any increase in quantity or any rescheduling to an earlier Delivery Date is subject to Suppliers Acknowledgment. At any time prior to shipment, HP and Eligible Purchaser may postpone any Accepted Order; provided that postponement of a non-cancelable Order for longer than sixty (60) days is subject to Supplier's consent. At any time prior to shipment, HP and Eligible Purchaser may decrease any Accepted Order; provided that quantities under a non-cancelable order may not be decreased, and non-cancelable Orders may not be canceled, to the extent Supplier has commenced production or acquired special components or dedicated raw materials for production. Accepted Orders for Product may be canceled at any time poor to Suppliers commencement of production.

5. Reports. Within thirty (30) days after close of each HP fiscal quarter, Supplier will provide HP a report which details purchases of Product by HP and all Eligible Purchasers by item, quantity and purchase location, showing total quantities shipped, total dollars invoiced, returns, percent of on-time and on-quality orders and such other information as HP and Supplier may mutually determine is appropriate. Reports will be sent to HP's and Eligible Purchaser's respective Purchaser locations and a report detailing HP's and Eligible Purchaser's total purchases will be sent to HP's primary contact set forth in the Agreement.

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Engineering Process And Design Changes

This Module contains additional provisions related to Engineering Process and Design Changes and forms part of the Hardware Product Purchase Agreement.

1. Supplier Proposed Changes. Except as set forth in this Module, Supplier will not make or incorporate in Product any of the following changes (each an "Engineering Change" and collectively, "Engineering Changes"): Process and raw material changes, including chemical and raw material formulations, component and material sourcing and quality statistical controls; design changes; geographical relocation of manufacturing, test, upgrade or repair process; and/or process step discontinuances affecting electrical performance, mechanical form, fit, function or performance, environmental compatibility, chemical characteristics, software compatibility or the life, reliability or quality of Product.

2. Notice of Proposed Change. Supplier will notify HP in writing of any proposed Engineering Change, to product that is deemed a complete design, and will provide evaluation samples and/or other appropriate information as HP may reasonably request at least ninety (90) days prior to the first proposed shipment of any Product involving an Engineering Change; provided that Supplier may not provide Product involving an Engineering Change to HP for production usage until HP has notified Supplier, in writing, that it has completed its qualification testing.

   2.1. If any Engineering Change affects price, component obsolescence, quality performance or delivery schedules of Product, an impact proposal prepared by Supplier will be presented to HP for approval prior to Supplier initiating any change.

   2.2. If, as a result of such an Engineering Change, HP would be unable to utilize Product due to a failure under HP's qualifications, Supplier will continue to provide Product without the Engineering Change until Supplier and HP resolve any qualification issues.

   2.3. If a resolution mutually recognized as such by both Parties is not achieved within a reasonable time, Supplier may, subject to the Discontinuance of Product and HP's Manufacturing Rights Module, if attached to this Agreement, discontinue supply of Product without the Engineering Change, whereupon HP may cancel all Accepted Orders for Product without cost or liability or terminate this Agreement upon written notice to Supplier.

3. HP Proposed Changes. HP may change HP supplied drawings or designs or the Specification at any time prior to manufacture, effective upon notice to Supplier. If any such change affects price, component obsolescence, quality performance or delivery schedules of Product, an impact proposal prepared by Supplier will be presented to HP for approval prior to Supplier initiating any change. Supplier must make written claim for any adjustment related to such change within ninety (90) days from the date HP approves Supplier's impact proposal or such claim will be waived.

4. Safety Standard Changes. Supplier will provide HP oral notice, to be followed by written notice, or email notice within twenty-four (24) hours of Supplier having knowledge of the need for any upgrade, substitution or other change required to make Product meet applicable safety standards. HP, in its discretion, may require that all affected Product be reworked or returned to Supplier for upgrade to current revisions or be upgraded by Supplier or HP in the field.

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Quality and Compensation

This Module contains additional provisions related to Quality and Compensation and forms part of the Hardware Product Purchase Agreement.

1. Purpose of this Exhibit. Supplier's obligations under Product and Compliance Warranties, Remedies and Related Terms of the Standard Terms to provide defect-free, conforming products to HP are primary and material obligations of Supplier, and are not in any way changed by this Module. The purpose of this Module is to set forth HP requirements for compensation and additional corrective actions by Supplier if Product fails to conform to the Product and Compliance Warranties, Remedies and Related Terms of the Standard Terms. The rights, remedies and obligations set forth in this Module are in addition to, and are intended to supplement rights, remedies and obligations specified elsewhere in the Agreement.

1.1. Quality System. Supplier is required to successfully pass HP's supplier qualification audits prior to the sale of any Product under this Agreement. In addition, Supplier will maintain a quality system that ensures compliance with this Agreement and meets at least one of the following: (1) current certification to the applicable ISO 9000 series of standards for the Products; (2) maintains a quality management system and manual that complies with the applicable ISO 9000 quality systems series of standards; or (3) is currently executing a plan to achieve ISO 9000 certification within eight (8) months from the Effective Date of this Agreement.

1.2. Documentation. Supplier upon written request will provide to HP copies of Suppliers quality system documentation and supporting test documentation. The Parties will create and maintain a combined team to provide oversight of Suppliers quality systems to ensure Supplier's compliance with this Agreement.

1.3. HP's Right to Inspect Facilities. With reasonable advance notice and in compliance with Supplier's security and safety requirements, HP and/or its designated representative may inspect Supplier's production and repair facilities (including but not limited to Product, raw materials, equipment associated manufacturing processes, test and inspection data, reliability data, failure analysis data, corrective action data, and training data) to ensure compliance with this Agreement. Supplier will inform its Subcontractors and suppliers of HP's right to inspect their facilities and will use reasonable efforts to secure such rights at no charge to HP. Supplier will provide quality-related reports and such other reports and information as HP may reasonably request.

1.4. Supplier Retina. HP periodically reviews its suppliers through the (HPSS (Hewlett-Packard Supplier Scorecard)Supplier will participate in the review process.

2. Epidemic Failure. For a period of three (3) years after Delivery, Supplier represents and warrants all Products against Epidemic Failure.

2.1. "Epidemic Failure" means [*]

2.2. Any failure of Product to conform to Product and Compliance Remedies and Related Terms of the Standard Terms constitutes an occurrence for purposes of calculating Epidemic Failure.

2.3. If HP determines that an Epidemic Failure may occur, HP may require Supplier to provide additional engineering and technical services and take other appropriate action at Supplier's expense to prevent any such occurrence and mitigate foreseeable consequences.

2.4. Epidemic Failure Process. If HP or Supplier determines there has been an Epidemic Failure, notice shall immediately be provided to the other party. Supplier will provide HP a preliminary root cause analysis and proposed Corrective Action Plan within seven (7) Business Days after receiving notice, or sending notice, as applicable. HP will make available such information and assistance as may reasonably be required for Supplier to conduct its root cause analysis and propose a Corrective Action Plan. HP may in its discretion concurrently prepare its own root cause analysis. Supplier will make available such information and assistance as may reasonably be required for HP to conduct its root cause analysis. If Supplier fails to provide a preliminary root cause analysis within 7 days of receiving notice, then Supplier must accept any root cause analysis and Corrective Action Plan offered by HP.

2.5. Epidemic Failure Remedies. After review of all root cause analyses and the applicable Corrective Action Plan, HP may determine, in its sole discretion, that the Epidemic Failure necessitates any individual action, or combination of, the following actions at Supplier's sole expense including, but not limited to, notification costs, return costs, cost of field recall, freight, labor cost, and rework incurred in effecting any of the following actions:

2.5.1. Customer based recall;
2.5.2. Retrofit;
2.5.3. Product recall; and/or
2.5.4. Implementation of a program that extends the in-warranty repair period for end users with regard to components that are identified in the root cause analysis for a period of time deemed to be sufficient in HP's sole discretion to provide adequate customer satisfaction.

Supplier failure remedies will not apply to epidemic failures directly related to the HP specified portion of the design.

2.6. HP may return affected Product to Supplier for correction, or HP may repair, rework or replace affected Product in the field either by itself or with help from HP's Authorized Service Providers at such Authorized Service Providers' location. Supplier will provide credit, reshipment of corrected affected Product and/or replacement as indicated by HP. Within thirty (30) days after completion of all recalls or retrofits, Supplier will reimburse one hundred percent (100%) HP's actual out-of-pocket losses, liabilities, costs and expenses reasonably incurred in responding to the Epidemic Failure, including, but not limited to, costs associated with conducting root cause analyses, costs of any improvement or switch-over program, expenses of third parties and notification costs and return costs, cost of field recall, freight, labor cost, and rework; provided that HP will use commercially reasonable efforts to mitigate to the maximum extent feasible.

3. Field Failure Metrics, Targets and Limits. To ensure that HP quality requirements are met, Supplier agrees to take all reasonable steps to comply with the applicable Failure Rate Metrics, Targets and Limits set forth in Table 1 of this Module. HP may revise the Targets and Limits set forth in Table 1 annually. Additionally, field failure metrics, targets, and limits may be addressed in the form of AFR, ARR, or CCFR in the Request For Quote documents and/or the cost and platform agreements associated with each Request for Quote. To the extent that a Request for Quote and/or cost/platform agreements provide guidance about AFR/ARR/CCFR targets or limits, or provide guidance about how to calculate AFR/ARR/CFR, those documents will take precedence over the rates, targets, and limits provided in Table 1 below and the compensation amounts set forth in Table 2 of this Module. Calculation will not include any aftermarket options installed by any party other than the supplier.

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Table 1: Failure Rate Metric Targets & Limits

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4. Engineering and Technical Services. Supplier shall provide engineering and technical services on a continuous basis in order to maintain Failure rates within the agreed upon Field Failure Metric Limits.

5. Corrective Action Plan and Compensation to HP .

 5.1. Corrective Action Plan. Whenever the Field Failure Metric Targets or Limits are exceeded, Supplier will develop and take all actions necessary to implement a Corrective Action Plan as set forth in this Module and as may be more fully detailed in the applicable commodity quality plan, if any.

6. Definitions.

"**AFR**" means Annual Failure Return rate. AFR measures non-quality field failures, which are Supplier fault only, determined at customer sites or as confirmed at an HP or its Affiliates returns processing/support site. HP or its Eligible Purchasers shall calculate AFR each month for each Product model, using repair centers, support site reports, and supplier reports. AFR is calculated as the aggregate failures across Product SKUs. AFRs are calculated by Supplier, by model, and technology. AFR = (SFO / cumulative install base) * 12 * 100% "SFO" means the number of Supplier fault only failures for each month. Cumulative install base equals total HP usage for the "base model" under review.

"**ARR**" means Annual Return Rate. ARR measures total field returns. HP or its Eligible Purchasers shall calculate ARR each month, for each Product model, using repair centers, support site reports, and supplier reports. ARR is calculated as the aggregate returns across PCs SKUs. ARRs are calculated by supplier, by model, and technology. ARR = (TR [month] / cumulative install base) * 12* 100%. TR = total number of returns for each month. Cumulative install base = total HP usage for the base model under review

"**Authorized Service Provider**" means a Subcontractor approved by HP to provide specified Services for Products

"**CCFR**" means Component Cumulative Failure Rate (in this definition, the term component has the same meaning as the term Product). CCFR measures quality field Failures determined at customer sites or as confirmed at an HP or its Affiliates returns processing/Support site HP or its Eligible Purchasers shall calculate CCFR each month, for each given HP system Product cycle, and each Product model using factories, repair centers, and support site reports.

CCFR is calculated in each cycle as the aggregate failures across PCs SKUs. CCFRs are calculated by vendor, by component type, region, ODM, description, model number. CCFR [m] = (Rdefect [m] = Wdefect [m] = FRU-defect (m}) / (installed base) * 100% [m] = the number of months since the component first shipped in that product cycle. [m] is between (1 and 15). Rdefect = is the sum of Defects found in units returned from the channel. Wb-defect = Defects found from units returned from customers under Warranty. FRU-defect = defective parts that are replaced in the field (customer environment) by either HP or its Affiliates

"**Corrective Action Plan**" means an HP-approved plan developed by Supplier to remedy a Failure. A Corrective Action Plan shall, at a minimum, include a detailed description of the actions to be implemented in the product design, production process, inspection process or Product sourcing in response to and to remedy a failure. Additionally, a Corrective Action Plan shall describe the additional engineering and technical support that Supplier will provide to reduce the Product Failure Rate to a level at or below the target Failure Rate for the Product, as well as any other necessary corrective measures as agreed to by HP and Supplier. The action plan may also potentially include the following remedies: (i) expedited shipment of replacement Products for inventory retrofit; (ii) processing all returns at no cost to HP; (iii) shipment of Software fixes directly to registered customers; (iv) credit for RMA back-log (v) and other actions as HP deems appropriate.

"**Eligible Purchasers**" includes, solely for the purposes of this Module, HP authorized service providers, including without limitation, HP repair centers, HP's Authorized Service Providers, and HP-authorized channel partners.

"**Failure**" means a deviation from the Product Specification as determined by visual inspections or by mechanical, electrical, or chemical testing or analysis. Failures will be verified using diagnostic tools and processes approved by HP and/or its Eligible Purchasers. Failures may be discovered during qualification, manufacturing, final assembly or as a result of returns or information received by Supplier for HP, its Eligible Purchasers or HP customers. A Failure may also include a visual defect which is a deviation from Specification consisting of a marking, blemish or coloration anomaly that does not affect functional performance of the Product ("Visual Defect'). Visual Defects are determined through appropriate visual inspection of the Product Supplier, HP or its Eligible Purchasers. A Customer Induced Defect ("CID") caused by misuse or mishandling of the Product by the end-user customer does not constitute a Failure.

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Service and Support Requirements

This Module contains additional provisions related to Service and Support Requirements and forms part of the Hardware Product Purchase Agreement.

1. Scope. This Module provides additional terms applicable to Supplier's provision of tangible Products used for support ("Spares") as well as Supplier's provision of Services used for support. These Spares and Services will be referred to together as "Support Services".

2. Precedence. This Module will take precedence over other terms in the Agreement addressing Support Services but will not otherwise modify the Agreement.

3. Service Support Life. Supplier will support Products sold to HP by providing Support Services for such Products while the Product is being manufactured and for five years after manufacturing ends ("Service Support Life"). Supplier acknowledges its responsibility to build additional Spares and to repair Spares throughout a Product's entire Service Support Life.

4. Pricing. While a Product is being manufactured, the price for Spares will be the current manufacturing price of the particular assembly / component / etc. plus an agreed upon pricing adder for packaging and kitting requirements. Repair pricing, for repairable Spares, will be provided before Product delivery begins, or earlier if requested by HP. Pricing will be reviewed every 90 days, or upon written request by either party and (i) during Product manufacturing, pricing changes for Spares and repairs will be based on changes in the Product price and (ii) after manufacturing ends, pricing for Spares and repairs will not increase without pre-approval by HP. Price increase request will not be unreasonably denied.

5. Regional Requirements. Support Services will conform to the following requirements:

   General.

Supplier will maintain regional support in North America and Europe and be able to support service calls in Asia-Pacific as well as at other mutually agreed upon locations. Supplier will maintain the capacity to deliver next business day support in North America, EMEA, and Asia Pacific as a minimal requirement and a 4 hour response in specific areas requested by HP.

Supplier will have English-speaking employees available in all sites for communications with HP. Memos, reports and other communications from Supplier will be in English and in writing.

Supplier will provide after hours support, 24 x 7, if requested by HP. Supplier will provide after hours contact procedures to allow HP to contact Supplier 24x7.

Upon HP request, Supplier will provide one day per month of after hours support, in each region, at no additional charge. HP will reimburse Supplier for additional after hours support requested during any month, but HP will not reimburse Supplier for after hours support arising out of Supplier's non-performance.

Provision of Spares. Supplier will make available spares supply to support HP's demand to fulfill regional distribution center. Supplier acknowledges that it is responsible to provide the materials management expertise and business oversight needed to maintain such inventory.

Supplier is responsible to maintain sufficient Spares in HP's regional distribution centers to allow HP to ship 98% of orders to HP customers the same Business Day ordered and to ship 100% of orders the next Business Day.

Supplier will monitor inventory levels in HP's regional distribution centers.

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6. Warranties.

a) Supplier warrants Support Services will conform to the requirements set forth in Attachment 1 to this Module which attachment is titled "Quality and Technical Requirements".

b) All Spares purchased by HP, whether newly manufacturer or repaired, will be provided with the warranties, warranty periods and warranty remedies defined in the Agreement applicable to Products.

7. Freight and Logistic Cost Responsibility. When a Field Return is covered by Supplier's warranty, Supplier will reimburse HP for HP's freight and logistics costs associated with the service event. HP is responsible for shipping expenses associated with product that has no fault found.

a) HP freight and logistics costs reimbursed will include (i) freight costs to ship Spares/Field Returns to and from HP and its customer, (ii) freight costs to ship Spares/Field Returns to and from HP and Supplier, (iii) handling, inspection, test and distribution costs related to shipping and receiving Spares/Field Returns, and (iv) insurance, taxes, duties, fees, free trade zone expenses, and similar costs. HP reserves the right to issue a debit memo for reimbursement owed.

b) In each region, HP will provide Supplier with a reasonable estimate of such HP costs. HP and Supplier will agree upon such cost and Supplier will credit HP for each in warranty event.

8. Forecasts. When a new Spare part number is created, HP will provide an initial forecast. HP may provide periodic forecasts afterwards, but is not obligated to do so. HP is not obligated to provide other forecasts. Any forecast provided by HP is for the convenience of Supplier, is non-binding, and does not create an obligation to purchase. There shall be no minimum order quantity for Spares or repairs.

9. Components. Supplier is solely responsible for providing all materials. Supplier acknowledges it is responsible for maintaining a supply of all materials required for provision of Support Services and, if required, to make last time buy of materials, including any Buy-Sell Parts or any other HP-provided materials to Supplier, based on the Service Support Life of the Product. HP is not obligated to continue to provide Buy-Sell Parts or any other HP-provided materials in lieu of a last time buy.

10. Excess and Obsolescence. HP will have no obligation to purchase any of Supplier's inventory or any minimum quantity of Spares or repairs. Without limiting the foregoing, HP will not have any obligation to pay for or reimburse Supplier for any inventory revaluation costs, inventory holding costs, purchase price variances, or costs Supplier incurs related to excess/obsolete inventory.

11. Third Party Services. HP may use an HP authorized third party to provide services related to support. Supplier will work with such HP designated third party.

12. Supplier Management Program. Supplier agrees to meet with HP, as requested up to four times per year, to review Supplier's performance, establish performance metrics to drive continuous improvements, and discuss other areas of mutual concern.

13. Additional Support Services. If additional or different Services are requested by HP, Supplier will use commercially reasonable efforts to promptly negotiate details of such requirements. Such additional or different Services will be governed by the Agreement.

14. Survival. This Module survives expiration or termination of the Agreement and HP may continue to purchase Support Services under the terms of the Agreement for the Service Support Life.

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Attachment 1 to Service and Support Module

Technical and Quality Requirements

Spares provided must be new or equivalent-to-new. Equivalent-to-new Spares are Spares that have been inspected, refurbished as necessary, and determined to be equivalent to new in appearance, revision level, performance, compatibility and reliability. Supplier will mark all equivalent-to-new Spares with the date of refurbishment.

Spares will be individually packaged, as appropriate, in single unit packages, containing all BOM materials and ready for shipment to HP's end user customers. Spares kits will conform to HP's reasonable requirements, including but not limited to HP labeling specifications. As reasonably required, individual Spares packages will be over-packed for shipment.

Upon HP request, Supplier will either (i) send a representative sample of each Spare to HP for HP to perform a first article inspection ("FAI"), or (ii) perform the FAI itself and send HP an FAI report including photographs. Supplier will not ship Spares without HP's prior approval of the FAI.

If any Spare is returned a third time, Supplier may only repair/reuse this Spare with authorization from HP.

Hold, Segregation and Rework Requirements. Upon written HP request, Supplier will place identified Spares shipments on hold within two (2) business hours. Supplier will segregate and sort Spares from all of Supplier's work in progress and/or inventory stock locations within one (1) Business Day and promptly manage any additional actions reasonably requested by HP.

Broker Purchases. Supplier will prepare and maintain a secondary source purchase plan, approved by HP before making any purchases from secondary sources. The secondary source plan must include sourcing procedures, supplier qualification procedures, quality monitoring processes, procedures to insure that materials meet HP's Specifications and requirements, and procedures to manage approval from HP and use of substitute or alternate parts. Supplier will inspect and test materials purchased from secondary sources and verify that material is not counterfeit and meets form, fit, function and cosmetic criteria. Secondary source purchases will be identifiable and traceable, for removal from supply chain if necessary.

Data Collection. Supplier will collect quality, returns, warranty and test data and report same to HP in format and frequency reasonably requested. Frequency, accuracy, and completeness of data reporting by Supplier will be measured by HP.

Reliability and Failure Analysis. Supplier will analyze suspected quality or engineering problems and determine likely cause of the problem. Quality problems include, but are not limited to, DOA's, NFF, high initial return rates, repeat returns analysis, test processes and correlation, and ongoing improvement activities to address underlying problems. Supplier will coordinate testing, analysis, and corrective action with its suppliers. Such actions include, but are not limited to, capturing components and Products, consolidating relevant data, tester correlation, and reviewing and providing the completed analysis to HP. Upon HP request, Supplier will send Spares to HP for HP's further quality review and, if HP does not return the Spare in 30 days HP will purchase the Spare.

Corrective Action. If HP requests corrective action, or if data indicate a need for corrective action, Supplier will implement a corrective action process including, but not limited to, (i) Supplier will within 1 Business Day, notify HP of the problem, its manifestations, symptoms, and an assessment of the problem's severity and impact including potential financial impacts; based on the problem severity, Supplier will promptly implement containment actions, (ii) Supplier will within one additional Business Day, recommend a plan to manage the problem, and (iii) Supplier will promptly take steps to contain the problem and will keep HP informed, at timeframe intervals specified by HP, of the current status of problem and corrective actions. The recommended plan to contain the problem will include, but not be limited to, recommended disposition of all affected products including those in the field; an assessment of financial impacts; recommended failure analysis testing; recommended short and long term corrective actions to be taken; a specific get well date; and provision of backup data such as trending and deviation analysis.

Technical Support Services. Supplier will provide, at no charge, technical support reasonably required to (i) maintain compatibility and functionality of Products related to then current operating systems, (ii) provide general technical support and information related to regulatory requirements including, but not limited to, import and export requirements and environmental laws, and (iii) provide technical support which requires in depth product engineering knowledge to isolate, including but not limited to interactions of Products with another product; if Supplier's technical support requires longer than one week to implement, Supplier may request HP to reimburse Supplier for its reasonable costs. The level of effort for support will be related to the severity of the issue, as assessed by HP; problems which prevent customer usage of Products will be supported 7x24 with goal to resolve in 24 hours. Supplier will provide additional technical support Services related to Product or Spare enhancements requested by HP and HP will pay for such enhancement Services at an hourly rate, or other cost agreed, based on Supplier's costs to develop/obtain the requested functionality.

Compliance. Supplier will promptly notify HP of any changes in laws or regulations, which it is aware of, which may require a change in Support Services.

Supplier Technical Assessment Audits. At HP discretion, technical assessments of Supplier will be conducted. HP's assessment will include an audit of Supplier's ability to process parts successfully and Supplier's compliance with the contractual requirements, quality plans, and the documented processes. HP's assessment will encompass all aspects of Supplier's processes including inspection of packaged finished inventory.

Rights and Assistance to Repair. Supplier grants to HP the right to repair and have repaired Spares for as long as HP chooses to support Products. Supplier will provide HP, within 30 days of HP's request: (i) a list of components and software required to repair and maintain Spares and Supplier's approved suppliers for these components. Components which are not readily available from sources other than Supplier will be listed, with Supplier's part numbers and purchase prices identified and such components will be made available to HP for purchase. Components having generic industry identification, not proprietary to Supplier, will be cross-referenced to generic manufacturer part numbers; and (ii) applicable test specifications, test procedures, repair procedures, drawings, test programs and other materials required to allow HP to repair and test Spares; and (iii) a full description of test equipment with manufacturer's model numbers, and (iv) reasonable technical assistance related to the above. Supplier will archive and maintain the above information through the end of the Service Support Life.

License Grant. Supplier grants HP a perpetual, royalty free, worldwide license to use, copy, modify, prepare derivative works of, and distribute, as reasonably required for HP's sale or maintenance of Products, any materials provided in accordance with this Module. Supplier will identify any third party materials provided.

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Discontinuance of Product and HP's Manufacturing Rights

This Module contains additional provisions related to Discontinuance of Product and HP's Manufacturing Rights and forms part of the Hardware Product Purchase Agreement.

1. Last Time Buy Rights. Once Supplier has sold Product under this Agreement, Supplier shall not discontinue the manufacture or supply of such Product for a period of three (3) years, unless approved by HP, after the dale of first Delivery to HP ("Assurance of Supply Period. After the expiration of the Assurance of Supply Period for a particular Product, if Supplier elects to discontinue the manufacture or supply of the Product (a "Discontinued Product"), Supplier shall give HP twelve months advance written notice that such manufacture or supply will be discontinued ("Notice Period"). During this twelve month Notice Period, HP and Eligible Purchasers may issue Last Time Buy Orders for the Discontinued Product. The Delivery dates for Last Time Buy Orders may extend past the Notice Period. Also during this twelve month Notice Period, HP may elect to exercise its manufacturing rights specified herein by written notice to Supplier.

2. HP's Right to Manufacture.

   2.1 Supplier hereby grants to HP, under Supplier's Intellectual Property Rights and Technical Information, a perpetual, nonexclusive, worldwide, royalty-free, fully paid-up license to use, modify, reproduce, import, manufacture, distribute, offer for sale and sell Discontinued Product, all with right to sublicense, without payments to Supplier of any royalties or other charges. Supplier will assign to HP any license rights it may have with third parties for Software Documentation or any intellectual property used in the manufacture of the Product. HP agrees that it will not exercise the rights granted in this Section 2.1 until HP provides Notice, in accordance with the Notices Module, of its election to exercise such rights during the Notice Period.

   2.2 Within seven days after HP has notified Supplier of HP's election to exercise its manufacturing rights for a Discontinued Product, Supplier will provide to HR (a) all Technical Information relating to the Product; (b) the names and addresses of Supplier's sources for parts not manufactured by Supplier, including the appropriate part numbers for commercially available equivalents of electronic parts, and Supplier will use reasonable efforts to enable HP to purchase all such Parts directly from Supplier's vendors; and (c) all parts catalogues, schematics, design specifications, blueprints, material lists, engineering change orders, and other servicing documentation deemed necessary by HP to manufacture, service and support the Product.

3. Survival. This Module survives expiration or termination of this Agreement as necessary to meet the time periods stated herein.

4. Definitions.

   "Last Time Buy" means a final purchase by HP or Eligible Purchasers in the quantities HP or Eligible Purchasers requires to provide a Product through the end of its or an HP's Product life cycle.

   "Technical Information" means Supplier's manufacturing information and technology to produce Product and provide Support, including without limitation: (i) specifications, Software, schematics, designs, drawings, or other materials pertinent to the most current reversion level of manufacturing of Product; (ii) copies of all inspection, manufacturing, test and quality control procedures and any other work processes; (iii) jig, fixture and tooling designs; (iv) supplier history files; (v) support documentation; and (vi) any additional technical information or materials that may be agreed to by the Parties.

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Assurance of Supply and Flexibility Agreement

This Module contains additional provisions related to Assurance of Supply and Flexibility and forms part of the Hardware Product Purchase Agreement.

I. **Assurance of Supply Agreement**. HP is committed to providing an uninterrupted supply of products and services to its customers. As a result, HP expects its suppliers, as specified in this Agreement, to provide an uninterrupted supply of products and services, free from defects and disruptions to HP. HP also expects its suppliers to be capable of delivering their products and services to the point and time of need, as specified by HP. Additionally, HP expects its suppliers to demonstrate continuous supply improvement, by identifying and implementing strategies that strengthen assurance of supply and reduce supply chain risk. Such strategies may include inbound, outbound and manufacturing lead-time reduction, industry standard sourcing, multi-sourcing, statistical inventory buffer analysis, formal stocking policies for similar components and finished goods, regional manufacturing, inventory stocking, and order management, postponement, and other manufacturing, inventory management, and logistics strategies that increase Supplier reliability, agility, flexibility, and responsiveness. Supplier shall comply with the following requirements:

1. Supplier shall provide an assurance of supply ("AoS") update for all key and critical components in the format as specified in Section 1e of this Module or as otherwise approved by HP ("Assurance of Supply Update").

   a. Assurance of Supply Updates will be delivered to the HP designated Recipient for Notices as identified in the Notices Module of the Agreement.

   b. An Assurance of Supply Update will be provided:

      i. As part of any Supplier response to an HP Request for Quote ("RFQ"); and
      ii. At least 4 weeks prior to any First Article Inspection; and
      iii. Monthly by the first Monday of each calendar month, or as otherwise agreed upon by HP.

   c. Upon receipt of the Assurance of Supply Update, Supplier and HP will designate a mutually agreed "risk rating" for each component. Supplier will identify opportunities and take appropriate actions to reduce the AoS risk rating for components. For any components that are mutually designated as high risk, Supplier will develop an AoS proposal for HP's review and approval within 30 days. Such AoS proposal is intended to improve assurance of supply for high risk components. If the Supplier proposal constitutes a Manufacturing Change, as defined in Section 2 of this Module, such proposed changes will be subject to Section 2 and Section 3 of this Module.

   d. Suppliers assurance of supply performance will be assessed as part of HP's formal supplier performance review process and will be considered in future business award decisions.

   e. Assurance of Supply Update Form. See Attachment 1 to this Module.

   f. Supplier Risk Calendar. Supplier shall develop and keep current a calendar that identifies the dates impacted by all known Manufacturing Changes, as defined in Section 2 of this Module, over a twelve (12) month period ("Risk Calendar"). An updated Risk Calendar will be provided by Supplier on a monthly basis or as otherwise agreed upon by HP.

   g. Assurance of Supply Meetings. Both parties will meet on a monthly basis to review and analyze: (a) HP forecast processes, methods, and accuracy, (b) Supplier inventory buffer performance, processes, and methods, (c) the AoS update form, (d) key AoS initiatives/projects of both parties, (e) key supply chain performance metrics and results of both parties, (f) Supplier employee turnover rates related to manufacturing, warehousing, and logistics operations, and (g) the Supplier Risk Calendar.

2. Supplier Proposed Manufacturing Changes. Except as set forth in this Module, Supplier shall not make, initiate, or incorporate in Product any of the following changes (each a "**Manufacturing Change**" and collectively, "**Manufacturing Changes**"):

   a. Changes to business processes, methods, or information systems that support procurement, manufacturing, logistics, warehouse management, materials management (e.g. MRP / ERP), and quality management;

   b. Geographical relocation of Product's sub-assembly, component manufacturing, test, upgrade, or repair processes;

   c. Supplier or Sub-supplier transitions, to include any assignment as defined in Section 15.3 ("Assignment") of the Agreement, or changes in sourcing strategy, name(s), location(s), logistics strategy, logistics providers, or other service providers;

   d. Events that may impact supply, including but not limited to, cycle counts of inventory, factory and warehouse shutdowns, changes in allocation of capacity to HP or Eligible Purchasers, or changes in lead times for any Product, Spare, sub-assembly, part or component.

3. Notice of Proposed Manufacturing Change. Except in the case of an Urgent Manufacturing Change (as defined below), at least ninety (90) days prior to the first proposed shipment of any Product involving a Manufacturing Change, Supplier shall notify HP in writing of any proposed Manufacturing Change and shall provide appropriate information as HP may reasonably request. Supplier shall not provide Product to HP or Eligible Purchasers involving a Manufacturing Change until HP has notified Supplier, in writing, that HP has completed its formal review and acceptance of such Manufacturing Change.

   a. With regard to any Product, Spare, sub-assembly, part, or component, if such Supplier proposed Manufacturing Change affects:

      i. Supplier cost or price;
      ii. Obsolescence;
      iii. Quality performance;
      iv. Lead times; or
      v. Shipment/delivery commitments,

   then a Manufacturing Change Request (MCR) form shall be prepared by Supplier. A MCR form shall also be prepared by Supplier for any Manufacturing Changes involving a geographical relocation as defined in Section 2b of this Module, a Supplier or Sub-supplier transition as defined in Section 2c of this Module, a change in allocation of capacity to HP or Eligible Purchasers, and any shutdown in factory or warehousing operations that exceeds 2 Business Days.

   b. Supplier's MCR form shall include the following elements, at a minimum: i) the reason(s) for Supplier proposed change, detailed description of the proposed change, iii) identification of all impacted Products, Spares, sub-assemblies, parts, and components, iv) detailed description of any impact on cost, price, obsolescence, quality performance, lead times, shipment/delivery commitments, and business continuity strategies or plans v) an implementation timeline with key milestones, vi) appropriate inventory buffer plan(s), and vii) appropriate contingency plan(s).

   c. All Supplier MCR forms will be presented to HP for approval, prior to Supplier initiating the proposed Manufacturing Change in whole or in part. All agreed inventory buffers shall be available and positioned per the HP approved MCR, prior to Supplier initiating the proposed Manufacturing Change in whole or part. Any deviation from the HP approved MCR (including missed or delayed key milestones, schedule changes, scope changes, and impact changes), will require Supplier to submit a revised MCR form for HP re-approval.

d. If HP decides not to approve the Supplier proposed Manufacturing Change, any related MCR, or any subsequent revision of an MCR, Supplier shall continue to provide the Product or Spare without the Manufacturing Change until Supplier and HP resolve any issues.

e. If a mutually agreed resolution to the Supplier proposed Manufacturing Change, any related MCR, or any subsequent revision of an MCR is not achieved within a reasonable time and prior to any impact on Supplier 's performance to the Flexibility Agreement of this Module (see below) for the current Product or Spare, HP may, subject to Section 6 of the Agreement (Services and Support Warranty), the Services and Support Requirements Module, if attached to this Agreement, and the Discontinuance of Product and HP 's Manufacturing Rights Module, if attached to this Agreement, discontinue Supplier's supply of the current Product or Spare, including cancellation of all Accepted Orders and planned hub replenishments for such current Product or Spare without cost or liability. HP 's entire liability will be limited to all Products and Spares for which HP has received and accepted delivery.

f. If any HP approved Manufacturing Change(s) impacts Supplier strategies or plans for responding to or recovery from potential disasters that could disrupt operations or delay supply, Supplier shall update its business continuity plan within 7 days of implementing such Manufacturing Change(s).

4. <u>Urgent Manufacturing Changes</u>. Supplier will provide HP with oral, followed by written notice, within twenty-four (24) hours of having knowledge of the need to implement any Manufacturing Change in less than 90 days in order to avoid or mitigate a potential: i) disruption in operations, ii) delay in supply of Products or Services, or iii) impact to performance against the Flexibility Agreement (each an "Urgent Change). Both parties agree that Urgent Changes require immediate action. In the case of an Urgent Change, Supplier will prepare and submit an MCR form, which meets the requirements described in this Exhibit, within forty-eight (48) hours following notice to HP. Within forty-eight (48) hours after receiving the MCR, HP will complete its review and provide its formal approval or rejection of such Urgent Change.

5. [*]

6. <u>Assurance of Supply Recognition</u>. HP values suppliers that consistently demonstrate exceptional assurance of supply performance and a commitment to continuous AoS improvement. Suppliers who, in HP 's opinion, diligently adhere to the AoS update processes described in Section 1 of this Module and the Manufacturing Change processes described in Section 3 of this Module, and meet or exceed the requirements in the Flexibility Agreement for the 12 month period of HP's fiscal year, will be nominated for HP's annual Assurance of Supply Award.

II. **<u>Flexibility Agreement</u>**. HP will provide a 12 month rolling Forecast. If Supplier is unable to meet the forecast requirements, Supplier will respond to HP within 48 hours after receipt of HP's Forecast with a supply plan committing the maximum supply available for the time periods defined in the Forecast. Supplier is authorized to use this Forecast to purchase within industry standard lead time any materials required to support the Forecast and the upside flexibility requirements described in this Module. Supplier will provide a list of long lead time components requiring special order management in order to meet HP's Forecast and flexibility requirements. In the event of cancellation of any Accepted Order or termination of this Agreement for reasons other than Supplier's default, HP's liability will be limited as specified below:

1. <u>Liability period</u>. Maximum HP liability period will be 12 weeks based on HP 's then current Forecast requirement and upside flexibility requirements as defined in the table below in section 3.

2. <u>HP Liability</u>. Within HP's liability period, HP's liability is limited to:

a. Finished goods inventory positioned to support the agreement;

b. Maximum 20 days Work in Process (WIP);

c. HP unique material purchased by Supplier within industry standard lead time to support HP forecast requirements. Supplier will submit and maintain a list of HP unique materials per the AoS Update;

d. Long lead time components, as identified in the AoS Update, or critical materials purchased with HP 's prior written consent, if exceeding the above guidelines; and

e. HP's share of materials that are not unique to the Product ("Common Materials") that can not be cancelled or consumed in other products within 6 months. If, after this six month period, Supplier identifies an opportunity to consume any portion of this material within the next 3 months, Supplier will deduct this amount from HP 's liability. HP's share is defined as HP 's requirement in proportion to Supplier 's overall production requirement.

Supplier will make every effort to mitigate HP's liability by finding alternate uses for the material or other methods of disposition that would serve to reduce HP's overall liability.

3. Supplier Flexibility. Supplier shall develop and implement internal processes to provide HP maximum flexibility and shall use reasonable efforts to maintain supply as set forth in the table below. HP 's maximum percentage increase is not cumulative.

[*]

4. Manufacturing Lead-Time. Upon design being finalized, supplier shall maintain the necessary processes and material to maintain a four (4) week lead-time from receiving a purchase order from HP, for a POD, to shipment

3. Definitions.

"First Article Inspection" is the ability for a supplier to demonstrate process capability for mass production of material to Hewlett-Packard product specifications with assured quality, cost, flexibility, and closed loop material logistics. Assured quality is demonstrated through process analysis tools such as Capability Studies, Process Management Plans, Failure Mode and Effects Analysis [FMEA], Inspection plans, Certificate of Compliance, and Change Management. The Corporate Procurement Engineer will notify the supplier via electronic mail of conditional production approval. Within 60 days of Conditional Production Approval, the Corporate Procurement Engineer may conduct a follow-up production audit.

ATTACHMENT 1

ASSURANCE OF SUPPLY UPDATE FORM

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Attachment 1 to Module I
Assurance of Supply Update Form
Rev Date: 12Nov07

Risk	Number of PN's
High	
Med	
Low	
Undetermined	
Total	0
Counter	0

HP Products	HP Part Numbers

Supplier Component Part Number	Component Description	Used On	Source Strategy	Sub Supplier Name	Sub Supplier Location	Supplier Location	Standard Leadtime (Days)	Component Value (A, B or C)	Supplier Stocking Strategy	Sub-Supplier Delivery Frequency	Source Inspection (Y/N)	JIT Process (Y/N)	Vendor Manage___ Inventory

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Eligible Purchasers

This Module contains additional provisions related to Eligible Purchasers and forms part of the Hardware Product Purchase Agreement.

1. Those legal entities identified at Section 5 and 6 of this Module ("Eligible Purchasers") may purchase under this Agreement. "HP Eligible Purchasers" means those HP Subsidiaries or Affiliates listed in Section 5 of this Module.

2. Supplier may require, as a condition of Eligible Purchaser's purchase that: (a) such Eligible Purchaser be subject to Supplier's normal credit standards and approval procedures (except for any HP Eligible Purchaser will not be subject to any credit approval procedure), (b) the Eligible Purchaser state that such purchase is made under this Agreement, and (c) such purchase is for production of, or is otherwise related to, HP Products. Such confirmation may be in a form reasonably acceptable to Supplier.

3. If an HP Eligible Purchaser purchases under this Agreement, then all of Supplier's representations, warranties and obligations in this Agreement run to the HP Eligible Purchaser and such HP Eligible Purchaser may make claims and exercise rights under this Agreement against Supplier as though the HP Eligible Purchaser had signed this Agreement.

4. If an Eligible Purchaser purchases under this Agreement: (a) all of Supplier's representation, warranties and obligations stated in this Agreement run to HP as though HP had made the purchase, (b) HP has no financial responsibility to Supplier for purchases by a ,Non-HP, eligible Purchaser and (c) Supplier and non-HP Eligible Purchasers will negotiate and agree upon their own payment terms and will not be bound by the provisions set forth in Section 2 (Payment") of the Standard Terms.

5. List of HP Eligible Purchasers.

A.	Corporate Name: Address:	Name: Hewlett-Packard Singapore (Private) Limited Address: 450 Alexandra Road Singapore 119960, Singapore
B.	Corporate Name: Address:	Hewlett-Packard Caribbean Manufacturing B.V Startbaan 16, (P.O. Box 66, 1180 AR Amstelveen) Address: 1187 XR Amstelveen, Netherlands

x

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Product Customization

This Module contains additional provisions related to customization of Products for HP and forms part of the Hardware Product Purchase Agreement.

1. Product Development and Assembly

1.1 Product Development. HP is requesting that Supplier assist with the development of a Customized Product. HP will provide to Supplier HP Specifications that describe the design considerations of the Customized Product. HP may request Supplier to assist with the creation or modification of the HP Specifications and any manufacturing requirements for such Customized Product. All such development and assistance will be in accordance with a Statement of Work (SOW') attached to this Module and this Agreement. Each SOW is incorporated into this Agreement. Supplier will use all commercially reasonable efforts to perform its obligations under the attached SOW, this Module and this Agreement, to complete development of the Customized Product.

1.2 Product Assembly. Supplier will manufacture and/or assemble the Customized Product for HP in compliance with the warranties and other applicable provisions in the Agreement and any additional terms set forth in the SOW.

1.3 Inspection. HP engineers and technicians may visit Supplier's facilities upon reasonable notice to inspect and advise on the design, manufacture and testing of Customized Products and to audit compliance with the SOW, HP Specifications, and this Agreement.

2. Intellectual Property. To the extent of any conflict between the Agreement and this Section 2, this Section 2 will control.

2.1 Pre-Existing Intellectual Property. Each Party will maintain all right, title, and interest, including all intellectual Property Rights, in and to its own Pre-Existing Intellectual Property irrespective of any disclosure of such Pre-Existing Intellectual Property to the other Party, and subject to the licenses granted herein.

2.2 Development Work. Subject to Supplier rights in any Pre-Existing Intellectual Property, HP will own and Supplier assigns and agrees to assign to HP, and will cause each Subcontractor to assign to HP, all right, title and interest in Development Work. To the extent permitted by law, Supplier waives any moral rights, such as the right to be named as author, to modify, to prevent mutilation, and to prevent commercial exploitation, whether arising under the Berne Convention or otherwise. All such Development Work will be deemed HP Confidential Information under this Agreement. All works of authorship included in the Development Work will bear the following copyright notice: © Copyright 2009 Hewlett-Packard Development Company, L.P.

2.3 Inventions. Supplier will inform HP promptly of any new Intellectual Property created in Supplier's development of a Customized Product. During and after this Agreement, Supplier will assist HP, at HP's expense, to secure, maintain and defend HP's Intellectual Property Rights in such Intellectual Property. To the extent reasonably requested by HP, and at HP's expense, Supplier will execute, and will ensure that each Subcontractor executes, any additional documents reasonably necessary to perfect, on a world-wide basis, HP's Intellectual Property Rights in such Intellectual Property. Supplier will not, without prior written authorization from HP, enter into any agreement with any third party relating to the disclosure, exploitation or transfer of such Intellectual Property.

2.4 Third Party Intellectual Property. Neither Supplier nor any Subcontractor will use any Third Party Intellectual Property in connection with the Customized Product unless Supplier or Subcontractor has the right to use such Third Party Intellectual Property for HP's benefit, and can grant the licenses to HP as specified in this Agreement. If Supplier or any Subcontractor uses any Third Party Intellectual Property in connection with the Customized Product, then prior to performance under this Agreement Supplier will: (I) obtain all licenses to such Third Party Intellectual Property that are necessary for Supplier to comply with this Agreement, (ii) identify in the SOW the Third Party Intellectual Property and the specific elements of the Customized Product that contain such Intellectual Property, and (iii) identify in the SOW the corresponding third party license(s).

2.5 License to Certain Intellectual Property. If Supplier uses any Third Party Intellectual Property and/or Supplier Pre-Existing Intellectual Property in connection with a Customized Product, Supplier grants and agrees to grant to HP a non-exclusive, irrevocable, perpetual, world-wide, royalty-free license to make, have made, use, sell, offer for sale and import such Customized Product, and to reproduce, display, distribute through multiple tiers of distribution, prepare derivative works of and disclose such Third Party Intellectual Property and Supplier Pre-Existing Intellectual Property in connection with the sale, distribution, import and support of such Customized Product.

3. Limitations. As to the Customized Product, Suppliers Defense and Indemnity obligations stated in the Agreement will not apply to the limited extent that a claim of patent infringement is caused solely and directly by either (i) Supplier's compliance with HP's Specifications, provided that all implementations of the HP Specification require an infringing use of the patent at issue, or (ii) modification to the Customized Product made by HP after final delivery of the Customized Product, provided that such claim would not have arisen but for such modification. Notwithstanding the foregoing, this limitation will not apply if either (i) Supplier had actual knowledge of the patent(s) that gave rise to the infringement claim before delivery of the allegedly infringing Customized Product, or (ii) the infringement claim arises from a Standard Component specified in HP's Specifications. For clarity, the foregoing limitation will only apply to patent infringement claims and to no other type of infringement claim.

4. Applicability of Agreement Terms. Unless otherwise specified in this Module, all terms of this Agreement applicable to Product are applicable to Customized Product.

5. Survival. The following provisions of this Module survive expiration or termination of this Agreement or any Accepted Order: Definitions, Intellectual Property, Limitations, and Survival.

6. Definitions.

"Customized Product" means a new Product or a modified existing Supplier Product.

"Development Work" means the Customized Product, Intellectual Property, and all other results and items arising out of Supplier's development of a Customized Product under this Agreement, including without limitation Software, Tools, Documentation, drawings, models, devices, reports, diagrams, instructional materials, notes, records, prototypes, and all Intellectual Property Rights thereto.

"Documentation" means the technical documentation that Supplier provides with, or makes available in connection with, a Customized Product, including but not limited to reference, implementation and user manuals which describe in reasonable and sufficient detail the operation and manufacture of a Customized Product, and the internal program documentation which describes in reasonable and sufficient detail the design, implementation and internal operation of such Customized Product, including design reports and program comments.

"Pre-Existing Intellectual Property" means the Intellectual Property and Intellectual Property Rights of a party existing prior to the Effective Date of this Agreement or prior to the commencement of any work performed pursuant to this Module, whichever occurs later.

"Standard Component" means a component or functionality that Supplier supplies or otherwise distributes to third parties, or that Supplier incorporates into other Supplier products or components that Supplier sells or otherwise distributes to third parties.

"Statement of Work" means a specific undertaking for the design and development of a Customized Product.

“Third Party Intellectual Property” means any third party Intellectual Property and Intellectual Property Rights, including without limitation those of a Subcontractor.

“Tools” means the jigs, fixtures, tools, molds, dies, stamps, prototypes, schematics, designs, and all documentation and material relating thereto that Supplier, its Subcontractors, agents, and/or employees generate that relate to the Customized Product.

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

EXHIBIT 1

PRODUCT DESCRIPTION, SPECIFICATIONS, AND STATEMENT OF WORK (SOW)

[*]

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Third Party and Open Source Software Components

This Module contains additional provisions related to Third Party and Open Source Software Components and forms part of the Hardware Product Purchase Agreement.

1. Supplier hereby identifies each software component and corresponding third party license pursuant to Section 7.1 of the Standard Terms.

Number	Third Party and Open Source Software Component	Corresponding Third Party License
1.		

2. If any Software is subject to a license which requires the distribution of source code (e.g., but not limited to, the GNU General Public License ("GPL"), the GNU Lesser Public General License ("LGPL"), Supplier will provide HP with all such source code.

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Additional Supplier Obligations

This Module contains Additional Supplier Obligations and forms part of the Hardware Product Purchase Agreement.

Clause 1: Supplier and HP will comply with the following obligations as applicable.

1. This Agreement will be managed by a management sponsor from both HP and Supplier.
2. These sponsors will conduct quarterly reviews concerning status of this Agreement
3. Each sponsor will act as an escalation path for issues arising under this Agreement with the objective of timely resolution.
4. The individuals identified in this Module may be re-designated at any time by their respective employers with notice to the other party.

HP TITLE	HP NAME, ADDRESS, PHONE, FAX, E-MAIL	SUPPLIER EQUIVALENT TITLE	SUPPLIER NAME, ADDRESS, PHONE, FAX, E-MAIL
Commodity Manager	[*]; 11445 Compaq Center Drive West, Houston, Tx, 77070 [*] [*]	Commodity Manager	[*]
Procurement Manager	[*]; 11445 Compaq Center Drive West, Houston, Tx, 77070. [*] [*]	Procurement Manager	[*]
Procurement Engineer	[*]; 11445 Compaq Center Drive West, Houston, Tx, 77070. [*] [*]	Procurement Engineer	[*]
Supplier Account Manager		Upper Management Executive	[*]
Upper Management Executive	[*]; 114-45 Compaq Center Drive West, Houston, Tx 77070 [*] [*]		
Worldwide Planner	[*]; 11445 Compaq Center Drive West, Houston, Tx, 77070 [*] [*]	Worldwide Planner	[*]
Product Safety Representative	[*]	Product Safety Rep	[*]

Clause 2:

Supplier's Performance Capability. HP may review Supplier's performance capability under this Agreement at HP's discretion, and Supplier will make available to HP, upon written request, information as may be reasonable, customary and sufficient to show Supplier's then current performance capability, including financial condition. If the financial condition of either Party materially and adversely changes from its financial condition as of the date of this Agreement, then the other Party will have the right to demand adequate assurance of due performance.

Clause 3:

Competitive Pricing. Supplier will maintain competitive pricing of Products for HP throughout the Term. At any time during the Term HP may notify Supplier that HP has received a bona fide offer to deliver Product, or a substantial equivalent, under written contract in approximately comparable volume, mix, service level and duration of committed sale as the undelivered or unperformed portion of any committed volume under this Agreement at pricing lower than pricing in effect under this Agreement or at lower total cost to HP. If within fifteen (15) days of the date of such notice Supplier does not reduce its pricing sufficiently to meet the terms of such offer and advise HP of such reduction, HP may purchase from such offer any or all of the undelivered or unperformed portion of any committed volume under this Agreement. The quantity so purchased will be deleted from any HP purchase requirements. Anything in the foregoing to the contrary notwithstanding, this provision will not apply to (i) any Non-cancelable Order for Product or (ii) any Accepted Order for Last Time Buys.

Clause 4:

Best Pricing. At any time during the Term, unless otherwise agreed, if Supplier sells or offers to sell Product with comparable volume under like payment terms at lower pricing or upon more favorable terms and conditions than in effect hereunder to another customer, Supplier will promptly notify HP and, unless prohibited by Applicable Law, offer such lower pricing or more favorable terms and conditions to HP during the period in which such lower pricing or more favorable terms and conditions are offered or in effect.

Clause 5:

New Product Offerings. At any time during the Term HP may notify Supplier that HP has received a bona fide offer to deliver goods which have superior technical specifications or superior attributes or capabilities as compared with Product, and to the extent it deems itself able to do so, HP may provide specifics so that Supplier may revise specifications for Product or otherwise offer such substitute goods to HP hereunder. If within a commercially reasonable time after such notice Supplier is unable to sell or fails to offer to sell HP Product with revised specifications (which are acceptable to HP) or such substitute goods at reasonable pricing and otherwise meeting the terms of such offer, HP may purchase from such offeror any or all of the undelivered or unperformed portion of any committed volume under this Agreement. The quantity so purchased will be deleted from HP's purchase requirements.

Clause 6:

Inspection and Audit Rights. HP, at its expense, may inspect and audit, and/or may engage an independent third party ("Auditor) to inspect and audit, on a semi-annual basis, or more frequently if HP reasonably believes Supplier may have breached any of its obligations under this Agreement, Supplier's books and records relating to, or otherwise connected with, Supplier's performance of its obligations under this Agreement and that are reasonably required to determine Supplier's compliance with Suppliers obligations under this Agreement. HP will provide Supplier reasonable notice, not less than ten (10) days in advance, of such inspection and audit. Supplier will refund the amount of any overcharge or other discrepancy as may reasonably be determined by such inspection and audit, and if the final report of such inspection and audit reveals an overcharge or other discrepancy of Five percent (5%) or more during the relevant time period, Supplier will also reimburse HP for all reasonable costs of the inspection and audit. Supplier will cooperate fully with all such inspection and audit requests; provided that (i) in no event will material containing any information that is protected under court order or the written directions of regulatory authorities be required to be disclosed and (ii) material may be redacted by Supplier to the extent necessary to protect against any invasion of personal privacy.

Any such Auditor will execute a confidentiality agreement in favor of Supplier containing terms no less restrictive than those set forth in this Agreement prior to receipt of any of the information referenced above; provided that such Auditor may disclose such information only to HP and Supplier; and provided further that (I) the identity of Supplier's other customers, details of specific customer transactions and actual costs incurred by Supplier will not be disclosed to HP and (ii) aggregated pricing, aggregate costs and other information not identifiable to an individual or source may be disclosed to HP. HP's right of inspection and audit under this provision will continue and survive for three (3) years after expiration or any termination of this Agreement.

Clause 7:

Tools. If HP pays Supplier to create any Tooling to manufacture, test or adapt Product or to enable Supplier to provide Service and Support to the Product, the Parties agree that HP owns all right, title, and interest in and to the Tools and any derivatives, improvements or modifications thereto and any Intellectual Property related to any and all of the above. Supplier warrants that Supplier can assign to HP all right, title and interest in and to the Tools and Supplier hereby irrevocably transfers, conveys and assigns to HP all of its right, title and interest in the Tools to HP. To the extent permitted by law, Supplier waives any moral rights, such as the right to prevent mutilation and the right to prevent commercial exploitation, whether arising under the Berne Convention or otherwise. Supplier will sign any necessary documents and will assist HP, at HP's expense, in preparing and executing any documents necessary for HP to obtain protection for the Tools on a worldwide basis. All works of authorship included in the Tools shall bear the following copyright notice: © Copyright 2009 Hewlett-Packard Development Company, L.P. "Tools" and "Tooling" mean the jigs, fixtures, tools, molds, dies, stamps, prototypes, schematics, designs, and all documentation and material relating thereto that Supplier, its subcontractors, agents, and/or employees generate that relate to the Product.

Clause 8:

Product Warranties. Notwithstanding anything to the contrary in Section 4.1 of the Standard Business and Legal Terms, all the warranties set forth in Section 4.1 will be in effect for the longer of (1) 6 months following acceptance or (2) the warranty period stated in a Module to this Agreement.

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Product Description, Product Specifications and Pricing

This Module contains additional provisions related to Product Description, Product Specifications and Pricing and forms part of the Hardware Product Purchase Agreement.

1. Product Descriptions are detailed in the chart below.

[*]

2. Product will perform to the Product Specifications attached to, or referred to, in this Module, if any.

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Product Returns and Non-Conforming Product

This Module contains additional provisions related to Product Returns and Non-Conforming Product and forms part of the Hardware Product Purchase Agreement.

1. Non-Conforming Product. All Non-Conforming Product may be returned to Supplier as set forth in this Module. Additionally, an entire lot of Product may be returned if a statistically significant sampling, as specified by HP, of that lot contains Non-Conforming Product. "Non-Conforming Product" means any Product which at any time during the applicable warranty period does not comply with the Product Specifications or otherwise does not comply with the requirements of an Accepted Order or this Agreement.

2. Return Materials Authorization. All returned Product will be accompanied by a Return Materials Authorization ("RMA"). Supplier will provide an RMA within two (2) Business Days of HP's or Eligible Purchaser's request. Product may be returned without an RMA if Supplier unreasonably refuses or fails to provide an RMA.

3. Correction of Non-Conforming Product. At HP's election, at Supplier's sole expense, Supplier will (a) repair or rework Non-Conforming Product within a reasonable time specified by HP, (b) replace same with conforming Product and ship with expedited shipping to arrive within two Business Days, (c) promptly issue credit therefore, or (d) promptly refund the purchase price if paid.

4. Return Charges. All Product returned to Supplier pursuant to this Module, and all replacement Product shipped by Supplier, will be at Supplier's risk and expense.

5. Duty to Remove HP Identifiers. Unless otherwise authorized by HP in writing, (i) Supplier will remove all HP part numbers, HP packaging, HP Intellectual Property (including HP Marks), any color or design scheme or code, and other customization for HP (collectively "HP Identifiers") prior to selling, transferring, distributing, scrapping or otherwise conveying any Product to others besides HP or Eligible Purchasers, and (ii) Supplier will not represent that any Product is built for HP or to HP Specifications.

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Insurance Requirements

This Module contains additional provisions related to Insurance Requirements and forms part of the Hardware Product Purchase Agreement.

1. Minimum Insurance Coverage. During the Term and at all times that Supplier performs services for HP, Supplier shall maintain in full force and effect, at Supplier's own expense, the following minimum insurance coverage. Minimum insurance limits may be obtained through any combination of primary and excess or umbrella liability insurance limits.

   A. Workers' Compensation or Social Scheme and Employers Liability Insurance: Workers' Compensation shall be as required by any applicable law or regulation having jurisdiction over Supplier's employees. If the jurisdiction has a Social Scheme, Supplier agrees to be in full compliance with laws thereof. The Employers Liability Insurance limit shall be the local currency equivalent of $1,000,000 USD. Where permitted by law, such policies shall contain waivers of the insurer's right of subrogation against HP, its subsidiaries, officers, directors and employees.

   B. General Liability Insurance (Public or Civil Liability): Supplier shall carry General Liability insurance covering liability arising from: Premises; Operations; Independent Contractors; Products and Completed Operations; Contractual Liability. Policy limits shall be local currency equivalent of: $10,000,000 USD per Occurrence (Combined Single Limit) and $20,000,000 USD General Aggregate. HP, its subsidiaries, officers, directors and employees shall be named as Additional Insureds under the policy. It is agreed the insurance afforded such Additional Insureds shall apply as primary insurance and that any other insurance carried by HP shall be excess only and shall not contribute with this insurance. If "claims made" policies are provided, Supplier shall maintain such policies at the above stated minimums, for at least three years after the expiration of the Term.

   C. Automobile Liability Insurance. If the Supplier will be driving onto HP or HP customer sites, then the Supplier shall carry Automobile Liability Insurance to cover bodily injury and property damage, arising from owned, hired, and non-owned vehicles with a combined single limit of liability for each accident of not less than the local currency equivalent of $1,000,000 USD.

2. Certificate of Insurance. Upon request, Supplier shall furnish Certificates of Insurance acceptable to HP. Supplier is responsible for notifying HP 30 days prior to any reduction or cancelation of coverage. All insurance policies will be written by a company authorized to do business in the territory and jurisdiction where the project is located. In no event will the coverage or limits of any insurance maintained by Supplier herein or the lack of availability of any other insurance, limit or diminish in any way Supplier's obligations or liability to HP under this Agreement. Any acceptance of insurance certificates by HP shall not limit or relieve Supplier of the duties and responsibilities assumed by it under this Agreement.

3. Deductibles and Self-Insured Retentions. All deductibles and/or self-insured retentions (if any), including those related to defense costs, are the sole responsibility of Supplier.

Module For

HARDWARE PRODUCT PURCHASE AGREEMENT NO. ______

Notices

This Module contains additional provisions related to Notices and forms part of the Hardware Product Purchase Agreement.

Any notice under this Agreement may be delivered by hand, overnight courier, first class pre-paid letter, facsimile or electronic mail transmission, and will be deemed to have been received: (a) by hand delivery, at the time of delivery; (b) by overnight courier, on the second Business Day after delivery to the carrier; (c) by first class mail, four (4) Business Days after day of mailing or, for international notice, seven (7) Business Days: and (d) by facsimile, immediately upon confirmation of transmission generated by sender's facsimile machine; or, (e) by electronic mail, immediately upon transmission unless returned as undelivered or returned undeliverable; provided however, for notice of termination or default, a copy must also be sent pre-paid by first class mail, overnight courier, or hand delivered by the end of the next Business Day.

For HP:

Name:	Bruce Mumma
Title:	Procurement Manager
Address:	11445 Compaq Center Dr. West Houston, TX 77070
Phone Number:	281-514-7889
Fax Number:	
Email:	bruce.mumma@hp.com

For Supplier:

Name:	Martin Olsen
Title:	VP, Global Channels
Address:	2128 W. Braker Ln., BK 12 Austin, TX 78758
Phone Number:	
Fax Number:	508-981-9588
Email:	molsen@activepower.com

EXHIBIT 21.1

SUBSIDIARIES OF THE REGISTRANT

Name of Subsidiary	Country of Incorporation
Active Power (Switzerland) AG	Switzerland
Active Power Solutions Limited	United Kingdom
Active Power (Germany) GmbH	Germany
Active Power (Italy) SrL	Italy
Active Power (Algeria) SARL	Algeria
Active Power (Japan) KK	Japan
Active Power (Hong Kong) Limited	Hong Kong
Active Power (Beijing) Co. Limited	China

EXHIBIT 23.1

Consent of Independent Registered Public Accounting Firm

We have issued our reports dated March 1, 2012, with respect to the consolidated financial statements and internal control over financial reporting included in the Annual Report of Active Power, Inc. on Form 10-K for the year ended December, 31 2011. We hereby consent to the incorporation by reference of said reports in the Registration Statements of Active Power, Inc. on Form S-8 (File No.-333-43248, File No. 333-56122, File No. 333-104725, File No. 333-115039, File No. 333-123587, File No. 333-132792, File No. 333-144782, File No. 333-150481, File No. 333-157662, File No. 333-165217 and File No. 333-167005) and Form S-3 (File No. 333-123586, File No. 333-161608, and File No. 333-163301).

/s/ Grant Thornton LLP

Dallas, Texas
March 1, 2012

EXHIBIT 23.2

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statements (Form S-8 Nos. 333-43248, 333-56122, 333-104725, 333-115039, 333-123587, 333-132792, 333-150481, 333-144782, and 333-157662 and Form S-3 Nos. 333-123586, 333-161608, and 333-163301) of Active Power, Inc., of our report dated March 4, 2010, with respect to the consolidated financial statements of Active Power, Inc. for the year ended December 31, 2009, included in this Annual Report (Form 10-K).

/s/ Ernst & Young LLP

Austin, Texas
March 1, 2012

Exhibit 31.1

CERTIFICATION
PURSUANT TO 17 CFR 240.13a -14
PROMULGATED UNDER
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Jan H. Lindelow, certify that:

1. I have reviewed this report on Form 10-K of Active Power, Inc.;

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 1, 2012

/s/ JAN H. LINDELOW

Jan H. Lindelow
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION
PURSUANT TO 17 CFR 240.13a -14
PROMULGATED UNDER
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, John K. Penver, certify that:

1. I have reviewed this report on Form 10-K of Active Power, Inc.;

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 1, 2012

/s/ JOHN K. PENVER

John K. Penver
Vice President of Finance, Chief Financial Officer and Secretary

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Active Power, Inc. (the " *Company*") on Form 10-K for the period ending December 31, 2011 as filed with the Securities and Exchange Commission on the date hereof (the " *Report*"), I, Jan H. Lindelow, President and Chief Executive Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 1, 2012

/s/ JAN H. LINDELOW
President and Chief Executive Officer

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Active Power, Inc. (the " *Company*") on Form 10-K for the period ending December 31, 2011 as filed with the Securities and Exchange Commission on the date hereof (the " *Report*"), I, John K. Penver, Vice President of Finance, Chief Financial Officer and Secretary of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 1, 2012

/S/ JOHN K. PENVER

John K. Penver
Vice President of Finance, Chief Financial Officer and Secretary