

2056981 A0657638

**FILED** *Adt*  
In the office of the Secretary of State  
of the State of California

MAR 06 2007

**SECOND AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
ARCOT SYSTEMS, INC.**

In accordance with Sections 902 and 903 of the California Corporations Code, the undersigned, Rammohan Varadarajan and Warren T. Lazarow, hereby certify that:

**ONE:** They are the duly elected and acting President and Secretary, respectively, of Arcot Systems, Inc., a California corporation (the "Corporation").

**TWO:** The Amended and Restated Articles of Incorporation of the Corporation shall be amended and restated to read in their entirety as follows:

**I.**

The name of this Corporation is Arcot Systems, Inc.

**II.**

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

**III.**

This Corporation is authorized to issue two classes of stock, designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which this Corporation is authorized to issue is two hundred ten million (210,000,000) shares, without par value, of which one hundred fifty million (150,000,000) shares are Common Stock and sixty million shares (60,000,000) are Preferred Stock, of which sixty million (60,000,000) are designated Series A' Preferred Stock ("Series A' Preferred"). Except as set forth in Article IV hereof relating to the Series A' Preferred, the Board of Directors is authorized to designate additional series of Preferred Stock and to fix the number of shares of any series of Preferred Stock and to determine or alter the rights, preferences, privileges, and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series of Preferred Stock, to increase or decrease (but not below the number of shares of any such series then outstanding) the number of shares of any such series subsequent to the issue of shares of that series.

#### IV.

The rights, preferences, privileges and restrictions granted to or imposed upon the Common Stock and Preferred Stock are as follows:

##### A. Dividends.

1. When and as declared by the Corporation's Board of Directors, the holders of outstanding Series A' Preferred, shall be entitled to receive in any fiscal year, out of any assets at the time legally available therefor, dividends in cash at the rate of \$0.03176 per share per annum (as adjusted for any stock dividends, combination, splits, recapitalizations and the like with respect to such shares after the date of filing of these Second Amended and Restated Articles of Incorporation), before any dividend is paid on Common Stock. Dividends may be declared and paid upon Common Stock in any fiscal year of the Corporation only if dividends shall have been paid to or declared and set apart upon all shares of Preferred Stock at such annual rate for such fiscal year of the Corporation. After such dividends are declared and paid upon the shares of Preferred Stock, dividends may be declared and paid on the Common Stock if at the same time equivalent dividends are declared and paid to holders of Preferred Stock (such dividends to be paid as determined on an as converted basis for the Preferred Stock).

2. The right to such dividends on Preferred Stock and Common Stock shall not be cumulative and no right shall accrue to holders of Preferred Stock or Common Stock by reason of the fact that dividends on said shares are not declared in any prior year, nor shall any undeclared or unpaid dividend bear or accrue interest.

##### B. Liquidation Preference.

1. In the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary,

(i) the holders of the Series A' Preferred shall be entitled to receive prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of any other class or series of the Company's capital stock by reason of their ownership of such stock, an amount per share equal to \$0.390732 (as adjusted for any stock dividends, combination, splits, recapitalization and the like with respect to such shares after the date of filing of these Second Amended and Restated Articles of Incorporation), for each share of Series A' Preferred then held by them, and in addition, an amount equal to all declared but unpaid dividends on the Series A' Preferred. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A' Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Series A' Preferred in proportion to the full aforesaid preferential amounts to which each such holder is entitled;

(ii) in lieu of receiving the above liquidation preference, prior to the time of any such liquidation, dissolution or winding up of the Corporation, the holders of Preferred Stock may convert their shares of Preferred Stock into shares of Common Stock, in

accordance with Article IV.D, below, and receive the assets of the Corporation on a pro rata basis with the holders of Common Stock.

2. After payment or setting apart of payment has been made to the holders of the Series A' Preferred of the full amounts to which they shall be entitled as set forth in Article IV.B.1. above, the holders of Common Stock shall be entitled to receive pro rata the remaining assets of the Corporation.

3. Unless determined otherwise by the holders of at least sixty-six and two-thirds percent (66 2/3%) of the then-outstanding Series A' Preferred (such percentage constituting a "Qualified Vote"), a consolidation or merger of the Corporation with or into any other corporation or corporations or any other corporate reorganization, in which the shareholders of the Corporation immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the Corporation's equity securities immediately after such consolidation, merger or reorganization, or a sale of all or substantially all of the assets of the Corporation, or a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of, shall be deemed to be a liquidation, dissolution or winding up within the meaning of this Article IV.B, *provided however*, that the issuance and sale of shares of Series A' Preferred pursuant to that certain Series A' Preferred Stock Purchase Agreement dated December 8, 2004 as amended, together with all subsequent closings thereunder, and the transactions contemplated thereby (together, the "Series A' Preferred Financing") shall not be deemed to constitute a liquidation, dissolution or winding up within the meaning of this Article IV.B.

4. Any securities to be delivered to the holders of the Preferred Stock and/or Common Stock pursuant to this Article IV.B. shall be valued as follows:

(a) Securities not subject to investment letter or other similar restrictions on free marketability:

(i) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three (3) business days prior to the closing;

(ii) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) business days prior to the closing; and

(iii) If there is no active public market, the value shall be the fair market value thereof, as mutually determined in good faith by the Board of Directors and the holders of at least a majority of the Preferred Stock of this Corporation.

(b) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount, as determined in good faith by the Board of Directors, from the market value determined as above in 4(a)(i), (ii) or (iii) to reflect the approximate fair market value thereof.

C. Voting Rights.

1. General. The holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which each such share of Preferred Stock is convertible on the record date for the vote or consent of shareholders and shall have voting rights and powers equal to the voting rights and powers of the holders of the Common Stock. The holder of each share of Preferred Stock shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation and shall vote with the holders of the Common Stock upon any matter submitted to a vote of shareholders, except those matters required by law to be submitted to a class vote or as otherwise provided in Sections G or H of this Article IV. Fractional votes shall not, however, be permitted, and any fractional voting rights resulting from application of the above voting formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one half being rounded upward).

2. Election of Directors.

(a) At each election of the Corporation's directors, so long as at such time there remains outstanding an aggregate of twenty-five percent (25%) or more of the Series A' Preferred that was issued and outstanding as of March 10, 2007 (as adjusted for any stock splits, reverse stock splits, stock dividends, recapitalizations or the like after the date of filing of these Second Amended and Restated Articles of Incorporation), the holders of the Series A' Preferred (voting together as a single class) shall elect five directors and the holders of Common Stock (voting together as a single class) shall elect one director, and the remaining directors shall be elected by all of the holders of Common Stock and Series A' Preferred, voting together as a single class.

(b) Notwithstanding any Bylaw provisions to the contrary, the shareholders entitled to elect a particular director shall be entitled to remove such director or to fill a vacancy in the seat formerly held by such director, all in accordance with the applicable provisions under California law.

D. Conversion. The holders of Preferred Stock shall have conversion rights as follows:

1. Right to Convert.

(a) Each share of Series A' Preferred shall be convertible, at the option of the holder thereof, at any time into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Issuance Price (as defined below) by the Conversion Price (as defined below) in effect at the time of conversion. The Issuance Price for the Series A' Preferred shall be \$0.390732. The Conversion Price for Series A' Preferred shall initially be \$0.390732, subject to adjustment as provided below. Such initial Conversion Price shall be adjusted as hereinafter provided.

2. Automatic Conversion. Each share of Series A' Preferred, together with any declared and unpaid dividends on such Preferred Stock, shall automatically be converted into shares of Common Stock at the respective Conversion Price at the time in effect for such series

of Preferred Stock immediately upon the earlier of (i) the sale of the Corporation's Common Stock in a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, the public offering price of which is not less than \$1.95366 per share (as adjusted for any stock splits, reverse stock splits, stock dividends, recapitalizations or the like after the date of filing of these Second Amended and Restated Articles of Incorporation) and with gross proceeds to the Corporation of not less than \$30,000,000 in the aggregate or (ii) the date upon which the Corporation obtains a Qualified Vote of the then outstanding shares of the Preferred Stock, voting together as a class, to such conversion.

3. Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same; provided, however, that in the event of an automatic conversion pursuant to Section D.2 above, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, or in the case of automatic conversion, on the date of closing of the underwritten offering or at the close of business on the date of a vote or written consent to conversion, whichever may be applicable, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

4. Fractional Shares. In lieu of any fractional shares of Common Stock to which the holder of Preferred Stock would otherwise be entitled upon conversion pursuant to this Article IV.D., the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock as determined by the Board of Directors of the Corporation. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock of each holder at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

E. Adjustment of Conversion Price. The Conversion Price of each series of Preferred Stock shall be subject to adjustment from time to time as follows:

(a) If the number of shares of Common Stock outstanding at any time after the date of filing of these Second Amended and Restated Articles of Incorporation is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, on the date such payment is made or such change is effective, the applicable Conversion Price of each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of any shares of Preferred Stock shall be increased in proportion to such increase of outstanding shares.

(b) If the number of shares of Common Stock outstanding at any time after March 10, 2007 is decreased by a combination of the outstanding shares of Common Stock (other than a combination that applies to both outstanding shares of Common Stock and Preferred Stock), then, following the record date of such combination, the applicable Conversion Price for the Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such Series shall be decreased in proportion to such decrease in outstanding shares.

(c) In case the Corporation shall declare a cash dividend upon its Common Stock payable otherwise than out of retained earnings or shall distribute to holders of its Common Stock shares of its capital stock (other than Common Stock), stock or other securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights (excluding options to purchase and rights to subscribe for Common Stock or other securities of the Corporation convertible into or exchangeable for Common Stock), then, in each such case, the holders of the Preferred Stock shall, concurrent with the distribution to holders of Common Stock, receive a like distribution based upon the number of shares of Common Stock into which such Preferred Stock is then convertible.

(d) In case, at any time after the date hereof, of any capital reorganization or any reclassification of the stock of the Corporation (other than as a result of a stock dividend or subdivision, split-up or combination of shares), or the consolidation or merger of the Corporation with or into another person (other than a consolidation or merger in which the Corporation is the continuing entity and which does not result in any change in the Common Stock), the shares of Preferred Stock shall, after such reorganization, reclassification, consolidation, merger, sale or other disposition, be convertible into the kind and number of shares of stock or other securities or property of the Corporation or otherwise to which such holder would have been entitled if immediately prior to such reorganization, reclassification, consolidation, merger, sale or other disposition such holder had converted its shares of Preferred Stock into Common Stock. The provisions of this clause (d) shall similarly apply to successive reorganizations, reclassification, consolidations, mergers, sales or other dispositions.

(e) All calculations under this Section E shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

F. Repurchase of Common Shares. Each holder of an outstanding share of Preferred Stock shall be deemed to have consented, for purposes of Sections 502 and 503 of the California General Corporation Law to distributions made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by employees, directors or consultants upon termination of their employment, directorship or consultancy pursuant to agreements providing for the right of such repurchase between the Corporation or a subsidiary and such persons.

G. Protective Provisions. So long as any shares of Series A' Preferred shall be outstanding, the Corporation shall not without first obtaining a Qualified Vote of the outstanding Series A' Preferred (whether by merger, recapitalization or otherwise):

(a) Amend, alter, waive or repeal any provision of the Articles of Incorporation or the Bylaws of the Corporation in such a way as to adversely affect the rights, preferences and privileges of the Series A' Preferred;

(b) Authorize, create, issue or designate, whether by reclassification or otherwise, any new class or series of stock or any other securities convertible into equity securities of the Corporation ranking on a parity with or senior to the Series A' Preferred in rights of conversion, redemption, liquidation preferences, voting or dividends or any increase in the authorized or designated number of any such new class or series;

(c) Consummate a liquidation, winding up, merger, consolidation, corporate reorganization or any transaction in which all or substantially all of the assets of the Corporation are sold, or in which the Corporation's shareholders immediately prior to such transaction own immediately after such transaction less than fifty percent (50%) of the equity securities of the surviving corporation or its parent, or a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed to holders who did not own any of such equity securities prior to the transaction(s), provided however, that the Series A' Preferred Financing shall not be deemed to constitute a liquidation, dissolution or winding up within the meaning of this subsection 5(c);

(d) Redeem or repurchase the Preferred Stock or the Common Stock (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Company or a subsidiary or in exercise of the Corporation's right of first refusal upon a proposed transfer);

(e) Increase or decrease the authorized number of directors; or

(f) Enter into any agreement or commitment to take any of the actions set forth in subsections (a) through (e) above.

H. Residual Rights. All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested with the Common Stock.

V.

A. The liability of the directors of this Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

B. The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through Bylaw provisions, agreements with agents, vote of shareholders or disinterested directors, or otherwise, to the fullest extent permissible under California law.

C. Any amendment, repeal or modification of any provision of this Article V shall not adversely affect any right or protection of any agent of this Corporation existing at the time of such amendment, repeal or modification.

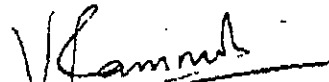
**THREE:** The foregoing Second Amended and Restated Articles of Incorporation has been approved by the Board of Directors of said Corporation.

**FOUR:** The foregoing Second Amended and Restated Articles of Incorporation has been duly approved by the required vote of the shareholders in accordance with Sections 902 and 903 of the California Corporations Code.

**FIVE:** The total number of outstanding shares entitled to vote with respect to the foregoing amendment and restatement was 61,335,960 shares of Common Stock and 27,733,222 shares of Series A' Preferred Stock. The number of shares voting in favor of the foregoing amendment equaled or exceeded the vote required, such required vote being (i) a majority of the outstanding shares of Common Stock and (ii) a majority exceeding sixty-six and two-thirds percent (66 2/3%) of the outstanding shares of the Series A' Preferred Stock.



IN WITNESS WHEREOF, the undersigned have executed this certificate on  
March 6, 2007.

  
Rammohan Varadarajan  
President

\_\_\_\_\_  
Warren T. Lazarow  
Secretary

The undersigned further declare under penalty of perjury under the laws of the State of California that they have read the foregoing Second Amended and Restated Articles of Incorporation and know the contents thereof and that the statements therein are true.

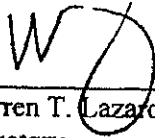
Executed at Menlo Park, California, on March 6, 2007.

  
Rammohan Varadarajan  
President

\_\_\_\_\_  
Warren T. Lazarow  
Secretary

**IN WITNESS WHEREOF**, the undersigned have executed this certificate on  
March 6, 2007.

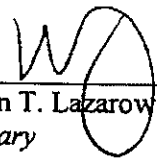
\_\_\_\_\_  
Rammohan Varadarajan  
*President*

  
\_\_\_\_\_  
Warren T. Lazarow  
*Secretary*

The undersigned further declare under penalty of perjury under the laws of the State of California that they have read the foregoing Second Amended and Restated Articles of Incorporation and know the contents thereof and that the statements therein are true.

Executed at Menlo Park, California, on March 6, 2007.

\_\_\_\_\_  
Rammohan Varadarajan  
*President*

  
\_\_\_\_\_  
Warren T. Lazarow  
*Secretary*