

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION**  
adopted pursuant to Section 245 of the  
Delaware General Corporation Law  
Effective November 8, 2006

**Opening Statement**

The present name of the corporation is AvePoint, Inc. AvePoint, Inc. was incorporated in Delaware on August 22, 2006. This Amended and Restated Certificate of Incorporation was proposed unanimously by the directors of AvePoint, Inc. and adopted by all of the shareholders of AvePoint, Inc. in the manner and by the vote prescribed in Section 242 of the Delaware General Corporation Law. This Amended and Restated Certificate of Incorporation replaces in its entirety the original Certificate of Incorporation.

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**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
Effective November 8, 2006**

**FIRST**

The name of the corporation is AvePoint, Inc.

**SECOND**

The registered office of the corporation in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle and its registered agent at such address is Corporation Service Company.

**THIRD**

The purpose or purposes of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

**FOURTH**

The Corporation shall have two classes of capital stock ("**Capital Stock**"): Common Stock, \$0.001 par value per share ("**Common Stock**"), and Preferred Stock, \$0.001 par value per share (the "**Preferred Stock**"). The total authorized number of shares of each class of Capital Stock is 4,075 shares of Preferred Stock and 15,000 shares of Common Stock.

A description of each class and series of Capital Stock of the Corporation and the powers, designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof is as follows:

**A. COMMON STOCK.**

1. **General.** The voting, dividend, liquidation and other rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series designated by the Board of Directors of the Corporation (the "**Board**") in this Certificate.

2. **Voting.** The holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings), provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Certificate of Incorporation or pursuant to the General Corporation Law. Except as otherwise provided in this Article, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the

affirmative vote of the holders of a majority of the Capital Stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

3. **Dividends.** Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board and subject to any preferential or participation dividend rights of the then outstanding Preferred Stock.

4. **Liquidation.** Upon the dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation legally available for distribution to its stockholders, subject to any preferential or participation rights of the then outstanding Preferred Stock, in proportion to the number of shares of Common Stock held by such holders.

## **B. PREFERRED STOCK.**

1. **Designation of Series A Preferred Stock.** 3,334 shares of the Preferred Stock shall be designated "Series A-1 Convertible Participating Preferred Stock" (the "**Series A-1 Preferred Stock**"). 741 shares of the Preferred Stock shall be designated the "Series A-2 Convertible Participating Preferred Stock" (the "**Series A-2 Preferred Stock**"). The Series A-1 Preferred Stock and the Series A-2 Preferred Stock are sometimes collectively referred to herein as the "**Series A Preferred Stock**".

### **2. Dividends.**

#### **2.1 Dividends on the Series A Preferred Stock.**

(a) The holders of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board, and as otherwise provided in this Certificate of Incorporation, out of funds legally available therefor, a dividend at the annual rate of 7%, compounded annually, of the Base Amount (as hereinafter defined) of each share of Series A Preferred Stock from and including the date of issuance of such share to and including the day on which the Series A Liquidation Value (as hereinafter defined) of such share is paid or on which such share is converted into Common Stock. Such dividends shall accrue from day to day, whether or not earned or declared, on each issued and outstanding share of Series A Preferred Stock, and shall be cumulative. The date on which the Corporation initially issues any share of Series A Preferred Stock will be deemed to be its "date of issuance" regardless of the number of times the transfer of such share is made on the stock records of the Corporation and regardless of the number of certificates which may be issued to evidence such share.

(b) If declared by the Board, dividends on each outstanding share of Series A Preferred Stock shall be paid on each anniversary of the date of issuance of such share (the "**Dividend Reference Dates**").

(c) Any dividends that accrue on any share of Series A Preferred Stock during the one year period ending upon such Dividend Reference Date that are not paid on such Dividend Reference Date shall automatically be added to the Base Amount of such share and will remain a

part thereof until such dividends are paid, at which time the Base Amount shall be reduced by such payment.

(d) The "Base Amount" of any share of Series A-1 Preferred Stock as of a particular date shall be an amount equal to the sum of the Original Series A-1 Purchase Price (as hereinafter defined) plus any unpaid dividends on such share added to the Base Amount of such share as provided above and not thereafter paid (as appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or the like). The "Base Amount" of any share of Series A-2 Preferred Stock as of a particular date shall be an amount equal to the sum of the Original Series A-2 Purchase Price (as hereinafter defined) plus any unpaid dividends on such share added to the Base Amount of such share as provided above and not thereafter paid (as appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or the like).

(e) Whether or not declared by the Board, upon the conversion of any shares of Series A Preferred Stock or the acceleration of senior indebtedness of the Corporation or any of its subsidiaries, the Corporation shall pay to the holder thereof an amount equal to all accrued and unpaid dividends thereon (including all dividends that were previously added to the Base Amount of such shares).

**2.2. Priority of Dividends.** No dividends may be paid on the Common Stock or any other series of Preferred Stock until all accrued but unpaid dividends on the outstanding shares of Series A Preferred Stock have been paid in full and in any event until an aggregate amount of dividends and distributions have been paid in cash (a) on each share of Series A-1 Preferred Stock equal to \$1,350.00 (as appropriately adjusted for any stock splits, dividends, combinations, reclassifications and the like) (the "**Original Series A-1 Purchase Price**"), and (b) on each share of Series A-2 Preferred Stock equal to \$1,687.50 (as appropriately adjusted for any stock splits, dividends, combinations, reclassifications and the like) (the "**Original Series A-2 Purchase Price**"). The Original Series A-1 Purchase Price and the Original Series A-2 Purchase Price are sometimes collectively referred to as the "**Original Series A Purchase Price**". All dividends and distributions (other than liquidating distributions contemplated by Section 4) on the Common Stock shall be made pro rata among the holders of Common Stock and the holders of the Series A Preferred Stock in proportion to the number of shares held by such holders, treating the shares of Series A Preferred Stock for this purpose as the number of shares of Common Stock into which such shares are then convertible.

**3. Voting Rights.** At every meeting of the stockholders (or for actions by written consent of stockholders), except as otherwise required by law or specified in this Certificate of Incorporation, on all matters to be voted on by the stockholders of the Corporation, the following provisions shall apply:

**3.1 Voting as a Single Class.** Except as otherwise set forth herein, the holders of Series A Preferred Stock and the holders of Common Stock shall vote together as a single class on all matters to be voted on by the stockholders, and the holders of shares of Series A Preferred Stock shall have the number of votes to which such holders would be entitled if such holders converted their shares of Series A Preferred Stock into shares of Common Stock.

**3.2 Series A Preferred Stock Voting Rights.** In addition to voting rights provided by law and by the previous Section, so long as any Series A Preferred Stock is outstanding, the Corporation shall not, without the affirmative vote or written consent of the holders of a majority of the outstanding shares of the Series A Preferred Stock:

(a) increase or decrease the authorized shares of any class or series of Capital Stock or alter or change the powers, preferences or rights of the Series A Preferred Stock or the qualifications, limitations or restrictions thereof, whether by merger, consolidation or otherwise;

(b) amend, alter or repeal its Certificate of Incorporation or By-laws, whether by merger, consolidation or otherwise, in any manner adverse to the holders of the Series A Preferred Stock;

(c) create or authorize the creation of any additional class or series of Capital Stock (whether by merger, consolidation or otherwise) that is senior to or *pari passu* with those of the Series A Preferred Stock on dividends, distributions, liquidations, redemptions or any other matter or that has any separate voting or approval rights; or

(d) breach or otherwise fail to comply with any of the covenants in favor of the holders of Series A Preferred Stock contained in Sections 1 or 2 of the Investor Rights Agreement, dated on or about the date hereof, by and among the Corporation and the other parties named therein (as amended, modified, supplemented, restated or replaced from time to time, the "Investor Rights Agreement").

#### **4. Liquidation.**

**4.1 Liquidation Preferences.** Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the Corporation shall make distributions to its stockholders of all cash and other assets of the Corporation legally available for distribution in the following order and priority:

(a) First, ratably among the holders of the Series A Preferred Stock, until the holders of Series A Preferred Stock have received under this Section 4.1(a) an aggregate amount in respect of each outstanding share of Series A Preferred Stock equal to all accrued and unpaid dividends thereon (including all dividends that were previously added to the Base Amount of such share).

(b) Second, ratably among the holders of the Series A Preferred Stock, until the holders of the Series A Preferred Stock have received under this Section 4.1(b) an aggregate amount in respect of each outstanding share of Series A Preferred Stock equal to its applicable Original Series A Purchase Price; provided, however, that (i) no distributions will be made under this Section 4.1(b) if each share of Series A Preferred Stock will receive an aggregate amount under Section 4.1(c) in excess of four and one-half (4.5) times its Original Series A Purchase Price (its "Maximum Participation Amount"), or (ii) if distributions under Section 4.1(c) in respect of each share of Series A Preferred Stock will be in excess of three and one-half (3.5) times its Original Series A Purchase Price but will be less than its Maximum Participation Amount, then distributions under this Section 4.1(b) shall be appropriately reduced (but not below zero) so that an aggregate

amount will be distributed in respect of such share under this Section 4.1(b) and Section 4.1(c) equal to its Maximum Participation Amount.

(c) Third, ratably among the holders of the Common Stock and the holders of the Series A Preferred Stock (treating each share of Series A Preferred Stock as the number of shares of Common Stock into which it is then convertible).

If upon such liquidation, dissolution or winding up of the Corporation, the assets to be distributed pursuant to any of the foregoing tiers (i.e., Sections 4.1(a), (b) or (c)) shall be insufficient to permit payment to the applicable holders of Capital Stock their full liquidation amounts required by such tier, then all of the assets of the Corporation then remaining shall be distributed ratably to such holders in proportion to the full liquidation amounts which would otherwise be payable under such tier. The aggregate payments in respect each share of Series A Preferred Stock under this Section 4 is sometimes referred to herein as its "Series A Liquidation Value".

**4.2 Treatment of Certain Transactions, etc.** The occurrence of a (i) sale, disposition or other transfer of all or substantially all of the assets of the Corporation, (ii) consolidation or merger of the Corporation, or (iii) sale or other transfer of Capital Stock of the Corporation, in each case in one transaction or a series of related transactions, resulting in the beneficial holders of the Corporation's outstanding Common Stock (calculated on an as-converted and fully-diluted basis) immediately prior to such transaction holding immediately after such transaction less than a majority of the Corporation's outstanding Common Stock (calculated as aforesaid) or, in the case of an asset sale or a consolidation or merger where the Corporation is not the surviving entity, less than a majority of the voting securities or economic interests in the acquiring or surviving entity (calculated on an as-converted and fully-diluted basis), shall be deemed to be a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this Section 4 and subject to all of the provisions of this Section 4. The agreement or plan of merger or consolidation with respect to such sale, merger, consolidation or other transaction shall provide that the consideration payable to the stockholders of the Corporation (in the case of a merger, consolidation or transfer of securities), or consideration payable to the Corporation, together with all other available assets of the Corporation (in the case of an asset sale), shall be distributed to the holders of Capital Stock of the Corporation in accordance with this Section 4. The amount deemed distributed to the holders of Preferred Stock and the holders of Common Stock upon any such transaction shall be the cash and the value of the property, rights or securities distributed to such holders by the Corporation or the acquiring person or entity. The value of any property, rights or securities distributed to the holders of Capital Stock shall be determined in good faith by mutual agreement of the Corporation and the holders of a majority of the shares of the Series A Preferred Stock.

**4.3 Qualified Public Offering.** Upon the conversion of Series A Preferred Stock in connection with a Qualified Public Offering (as hereinafter defined), the holders of Series A Preferred Stock shall be entitled, before any distribution or payment is made upon any shares of Common Stock or any other class or series of Capital Stock, to be paid in cash in United States dollars in respect of each share of Series A Preferred Stock held by such holder, an amount determined in accordance with Section 4.1 by taking the pre-money valuation of the outstanding Capital Stock of the Corporation immediately prior to such offering and allocating that value in accordance with such Section; provided, however, that such holders shall not be entitled to receive

an amount per share equal to the amount receivable in respect of the share or shares of Common Stock into which such share is then convertible (because such shares of Series A Preferred Stock will convert into Common Stock under Section 5.6).

## **5. Conversion of Series A Preferred Stock into Common Stock.**

### **5.1 Exercise of Conversion Rights.**

(a) Subject to the terms and conditions of this Section 5, the holder of any share or shares of Series A-1 Preferred Stock shall have the right at any time, at such holder's option, to convert any such share or shares into the number of shares of Common Stock determined by multiplying one (1) times the quotient obtained by dividing (i) the Original Series A-1 Purchase Price by (ii) the "Series A-1 Conversion Price", which term shall mean initially \$1,350.00 and thereafter as from time to time adjusted pursuant to Section 5.3.

(b) Subject to the terms and conditions of this Section 5, the holder of any share or shares of Series A-2 Preferred Stock shall have the right at any time, at such holder's option, to convert any such share or shares into the number of shares of Common Stock determined by multiplying one (1) times the quotient obtained by dividing (i) the Original Series A-2 Purchase Price by (ii) the "Series A-2 Conversion Price", which term shall mean \$1,687.50 initially and thereafter as from time to time adjusted pursuant to Section 5.3. The Series A-1 Conversion Price and the Series A-2 Conversion Price are sometimes collectively referred to herein as the "Conversion Price".

(c) It is understood that the accrued but unpaid dividends on the Series A Preferred Stock shall not be converted into Common Stock, but instead shall be paid in cash as contemplated by Section 2.1(e).

(d) A holder of Series A Preferred Stock may exercise such holder's conversion rights by giving written notice to the Corporation that the holder elects to convert a stated number of shares of Series A Preferred Stock into shares of Common Stock on the date specified in such notice (the "Conversion Date"), and by surrendering the certificate or certificates representing the Series A Preferred Stock to be converted to the Corporation at its principal office at any time during its usual business hours on or before the Conversion Date.

**5.2 Issuance of Common Stock; Effect of Conversion.** Promptly after receipt of the written notice from the holder referred to above and surrender of the certificate or certificates representing the share or shares of Series A Preferred Stock to be converted, the Corporation shall, as soon as possible, cause to be issued and delivered to the holder, registered in such holder's name, a certificate or certificates for the number of shares of Common Stock issuable upon the conversion of such share or shares together with cash in lieu of any fraction of a share. Such conversion shall be deemed to have been effected as of the opening of business on the Conversion Date, and at such time the rights of the holder of such share or shares so converted shall cease, except for the right to receive any declared but unpaid dividends on such share or shares, and such holder shall be deemed to have become the holder of record of the shares of Common Stock represented thereby.

**5.3 Adjustment of Conversion Prices.** The applicable Conversion Price from time to time in effect for each series of Series A Preferred Stock shall be subject to adjustment (to the nearest hundredth of a cent) from time to time as follows:

(a) **Adjustment to Conversion Price for Certain Issuances.** If at any time after the original date of issuance of the Series A-1 Preferred Stock, the Corporation shall issue (or be deemed to have issued) any shares of Common Stock or any Common Stock Equivalents (as hereinafter defined), for a consideration per share (determined in accordance with this Section 5.3(a)) less than the applicable Conversion Price in effect immediately prior to the issuance (or deemed issuance) of such Common Stock or Common Stock Equivalents, such Conversion Price in effect immediately prior to each such issuance (or deemed issuance) shall be decreased to the amount determined in accordance with the following formula:

$$\text{Conversion Price} = \frac{P1Q1 + P2Q2}{Q1 + Q2}$$

For purposes of the foregoing formula:

P1 = The Conversion Price for a share of Series A Preferred Stock as in effect immediately prior to such issuance.

Q1 = Number of shares of Common Stock deemed outstanding (in accordance with subparagraph (v) below) immediately prior to such issuance.

P2 = Average price per share received by the Corporation upon such issuance (determined in accordance with subparagraph (ii) below).

Q2 = Number of shares of Common Stock issued or sold, or deemed to have been issued or sold (in accordance with subparagraph (iii) below) upon such issuance.

For purposes of this Section 5, the following provisions shall be applicable:

(i) **"Common Stock Equivalents"** means any equity or debt interest or security convertible into or exchangeable for Common Stock, or any right, warrant or option to acquire any Common Stock or such convertible or exchangeable equity or debt interest or security.

(ii) The per share consideration for the sale or issuance of Common Stock shall be the price per share received by the Corporation after payment of any related commissions, discounts and other similar expenses. In the case of the sale or issuance of Common Stock Equivalents, the per share consideration shall be determined by dividing (A) the maximum number of shares of Common Stock issuable with respect to such Common Stock Equivalents into (B) the sum of aggregate consideration received by the Corporation upon the sale or issuance of such Common Stock Equivalents plus the minimum aggregate amount of any additional consideration receivable by the Corporation upon the conversion or exercise of such Common Stock Equivalents less the payment of any related commissions, discounts or other similar expenses. The value of any non-cash consideration received or receivable upon the sale or issuance of Common Stock or



Common Stock Equivalents shall be determined reasonably and in good faith by a majority of the Board.

(iii) In the case of the sale or issuance of Common Stock Equivalents, the maximum number of shares of Common Stock issuable with respect to such Common Stock Equivalents shall be deemed issued on the earlier of the date that the Corporation enters into a binding agreement to sell or issue such Common Stock Equivalents and the actual sale or issuance of such Common Stock Equivalents. In the case of the sale or issuance of shares of Common Stock, such Common Stock shall be deemed to have been issued on the earlier of date that the Corporation enters into a binding agreement to sell or issue such Common Stock and the actual sale or issuance of such Common Stock.

(iv) If any Common Stock Equivalents included in adjustments under this Section 5.3(a) expire or terminate without the Common Stock to which they relate having been issued, the Conversion Price shall be readjusted to eliminate the effect of the assumed issuance of such Common Stock. If any Common Stock Equivalents by their terms provide for subsequent increases or decreases in the additional consideration payable for the related Common Stock or for subsequent increases or decreases in the number of shares of Common Stock obtainable, upon any such increase or decrease, the Conversion Price shall be appropriately readjusted to the extent such Common Stock Equivalents have not then expired or been exercised or converted. Any aggregate increase in the Conversion Price caused by all such readjustments shall not exceed the decrease in Conversion Price made upon the issuance of the Common Stock Equivalents to which such readjustment relates.

(v) The number of shares of Common Stock outstanding at any time shall include all outstanding shares of Common Stock and all shares of Common Stock issuable pursuant to any Common Stock Equivalent then outstanding (but expressly excluding the shares of Common Stock issuable upon conversion of the Series A Preferred Stock).

(vi) There shall be excluded from the adjustment of the Conversion Price (A) the issuance of shares of Common Stock and options to acquire Common Stock to employees, consultants and directors of the Corporation or any subsidiary of the Corporation, so long as such issuances are approved by the Board, including the approval of the representatives on the Board designated by the holders of the Series A Preferred Stock, and (B) the issuance of shares of Common Stock or Common Stock Equivalents as consideration for any debt financing or strategic business transaction or arrangement by the Corporation or any subsidiary, which debt financing or transaction or arrangement (including the terms and conditions of the issuance) have been approved by the Board, including the approval of the representatives on the Board designated by the holders of the Series A Preferred Stock.

(b) **Stock Dividends, Stock Splits, Subdivisions and Combinations.** In case the Corporation shall at any time subdivide its outstanding shares of Common Stock into a greater number of shares, or make any dividend or other distribution upon any stock of the Corporation payable in Common Stock, the applicable Conversion Price in effect immediately prior to such subdivision, dividend or distribution shall be proportionately reduced, and in case at any time the outstanding shares of Common Stock of the Corporation shall be combined into a smaller number

of shares, the applicable Conversion Price in effect immediately prior to such combination shall be proportionately increased.

(c) **Adjustment for Reclassifications, Merger, Sale of Assets, etc.** Without limiting any approval or other rights of the holders of the Series A Preferred Stock, if there occurs any capital reorganization or any reclassification of the Capital Stock of the Corporation, any consolidation or merger of the Corporation with or into another company or other entity, or any sale or conveyance of all or substantially all of the assets of the Corporation to another entity, any holder of Series A Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock the same kind and amounts of securities and other assets which the holder would have received as a holder of Common Stock if such holder had exercised such holder's conversion rights immediately prior to such transaction. In any such case, appropriate adjustments (as determined reasonably and in good faith by the Board) shall be made with respect to the rights and interests of the holders of Series A Preferred Stock after such event to the end that the provisions hereof (including the adjustment provisions in this Section and number of shares issuable upon conversion of the Series A Preferred Stock) shall thereafter apply as reasonably as they may to the securities or assets thereafter deliverable upon the conversion of shares of Series A Preferred Stock.

(d) **Certificate as to Adjustments.** Whenever the Conversion Price for any Series A Preferred Stock shall be adjusted as provided in this Section, the Corporation shall promptly send to each holder of such Series A Preferred Stock a written statement, certified by the chief financial officer or chief executive officer of the Corporation, showing in detail the facts requiring such adjustment and the applicable Conversion Price for such Series A Preferred Stock that shall be in effect after such adjustment. The chief financial officer or chief executive officer of the Corporation shall, upon written request at any time of any holder of Series A Preferred Stock, promptly furnish to such holder a certificate setting forth the applicable Conversion Price then in effect and the number of shares and amount, if any, of other securities, cash or property which then would be received upon conversion of such Series A Preferred Stock.

(e) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay such holder cash in United States dollars equal to such fraction multiplied by the then fair market value of one share of Common Stock (as determined reasonably and in good faith by the Board). The determination as to whether or not any fractional shares are issuable shall be based upon the total number of shares of Series A Preferred Stock converted at one time, and not upon each share of Series A Preferred Stock so converted.

(f) **Notice of Certain Dates.** In the event the Corporation shall propose to take any action of the types described in this Section 5.3, the Corporation shall give notice to each holder of Series A Preferred Stock, which notice shall specify the record date, if any, with respect to any such action and the date on which such action is to take place. Such notice shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action on the Conversion Price and the number, kind or class of shares or other securities or assets receivable upon conversion of the shares of the Series A Preferred Stock. In the case of any action which would require the fixing of a record date, such notice shall be given at least 20 days prior to

the date so fixed, and in the case of all other actions, such notice shall be given at least 30 days prior to the taking of such proposed action.

**5.4 Reservation, etc.** The Corporation will at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of issuance upon the conversion of Series A Preferred Stock the maximum number of shares of Common Stock as could be issuable upon the conversion of all then outstanding shares of Series A Preferred Stock. All shares of Common Stock which are issuable upon conversion of Series A Preferred Stock in accordance with this Certificate of Incorporation will, when so issued, be duly authorized, validly issued, fully paid and nonassessable. The Corporation will take all action that may be necessary to assure that all shares of Common Stock issuable upon such conversion may be so issued without violation of any law, regulation or agreement applicable to the Corporation.

**5.5 No Charge.** The issuance of certificates representing Common Stock upon conversion of Series A Preferred Stock as set forth herein shall be made without charge for any expense or issuance tax in respect thereof, provided that the Corporation shall not be required to pay any taxes which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of shares converted.

**5.6 Automatic Conversion.**

(a) The shares of Series A Preferred Stock shall automatically be converted into the number of shares of Common Stock into which such shares of Series A Preferred Stock are convertible under this Section 5 upon (i) the election of the holders of a majority of the shares of Series A Preferred Stock by written notice to the Corporation, or (ii) the closing of a Qualified Public Offering (as hereinafter defined). If the Corporation closes a Public Offering that is not a Qualified Public Offering and the holders of the Series A Preferred Stock convert their shares in connection with such Public Offering, then in connection with such conversion each holder of Series A Preferred Stock shall be entitled to receive from the Corporation, in addition to the shares of Common Stock issuable under this Section 5, a cash payment for each share of Series A Preferred Stock so converted determined in the manner set forth in Section 4.3.

(b) The date of any mandatory conversion that occurs pursuant to this Section 5.6 is sometimes referred to herein as a "**Mandatory Conversion Date**". The Corporation will promptly give all holders of record of the applicable Series A Preferred Stock written notice of the Mandatory Conversion Date, which notice may be delivered after the Mandatory Conversion Date. Such notice shall contain the Mandatory Conversion Date and the date and place to surrender such holder's shares of Series A Preferred Stock to the Corporation. Each holder of shares of the Series A Preferred Stock shall surrender such holder's certificate or certificates for all such shares to the Corporation on or before the date, and at the place, designated in such notice. The Corporation shall thereafter as soon as possible deliver certificates for the number of shares of Common Stock to which such holder is entitled together with any cash in lieu of any fraction of a share as provided in Section 5.3(e). Such mandatory conversion shall be deemed to have been effected as of the Mandatory Conversion Date, and at such time the rights of the holder of such share or shares so converted shall cease, except for the right to receive any declared but unpaid dividends on such share or shares, and such holder shall be deemed to have become the holder of record of the shares of Common Stock represented thereby.

(c) As used herein, a "**Public Offering**" means an underwritten public offering by the Corporation pursuant to a registration statement under the Securities Act of 1933, as amended. As used herein, "**Qualified Public Offering**" means a Public Offering in which (i) the pre-money valuation of the outstanding Capital Stock of the Corporation immediately prior to such offering, based on the price per share at which shares of Common Stock of the Corporation are to be sold to the public, is at least \$150 million, (ii) the aggregate net proceeds to the Corporation from such Public Offering will be at least \$50 million and (iii) the Corporation's Common Stock is listed for trading on the Nasdaq National Market or other nationally recognized securities exchange.

6. **No Dilution or Impairment.** The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of the Series A Preferred Stock set forth herein, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate in order to protect the rights of the holders of the Series A Preferred Stock against dilution or other impairment. Without limiting the generality of the foregoing, the Corporation (a) will not increase the par value of any shares of stock receivable on the conversion of the Series A Preferred Stock above the amount payable therefor on such conversion, (b) will take all such action as may be necessary or appropriate in order that the Corporation may validly and legally issue fully paid and nonassessable shares of stock on the conversion of all Series A Preferred Stock from time to time outstanding, and (c) will not consolidate with or merge into any other entity or permit any such entity to consolidate with or merge into the Corporation (if the Corporation is not the surviving entity), unless such other entity shall expressly assume in writing, and will be legally bound by, all of the terms of the Series A Preferred Stock set forth herein.

7. **Additional Provisions Relating to Notices.**

7.1 In the event of (a) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, (b) any capital reorganization of the Corporation, any reclassification or recapitalization of the Capital Stock of the Corporation, any merger or consolidation of the Corporation, or any transfer of all or any substantial portion of the assets of the Corporation, or any other transactions contemplated by Section 5.3, or (c) any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall deliver to each holder of Series A Preferred Stock a notice specifying (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right and a description of such dividend, distribution or right, (ii) the date on which any such reorganization, reclassification, recapitalization, transfer, merger, consolidation, dissolution, liquidation or winding up is expected to become effective and (iii) the time, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to receive or exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, recapitalization, transfer, merger, consolidation dissolution, liquidation or winding up. In the case of any action which would require the fixing of a record date, such notice shall be given at least 20 days prior to the date so

fixed, and in the case of all other actions, such notice shall be given at least 30 days prior to the taking of such proposed action.

7.2 All notices delivered under this Certificate of Incorporation to any holder of Preferred Stock will be sent by prepaid overnight courier or first class or registered mail, postage prepaid, or (to the extent permitted by law) by e-mail to each record holder of Preferred Stock at such holder's address last shown on the records of the transfer agent for the Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent).

## **8. Waivers.**

8.1 Any of the rights of the Series A-1 Preferred Stock set forth herein may be waived in writing by the affirmative vote of the holders of at least a majority of the shares of the Series A-1 Preferred Stock. Any rights of the Series A-2 Preferred Stock set forth herein may be waived in writing by the affirmative vote of the holders of a majority of the shares of Series A-2 Preferred Stock. The waiver of any provision of this Certificate of Incorporation shall not be construed as a waiver of any other provision contained herein or as a continuing waiver of any subsequent application of any provision contained herein. No delay or omission by any holder or holders of Preferred Stock in exercising any right under this Certificate of Incorporation shall operate as a waiver of that or any other right.

8.2 To the fullest extent permitted by law, the Corporation renounces any interest or expectancy of the Corporation in, or being offered the opportunity to participate in, specified business opportunities or specified classes of business or categories of business opportunities that are presented to the holders of the Series A Preferred Stock or any of their affiliates, employees, partners, representatives or agents (collectively, the "Covered Persons"), unless such opportunities are presented to a Covered Person solely in his capacity as a director of the Corporation.

## **FIFTH**

The name and address of the incorporator is as follows:

Corporation Service Company  
2711 Centerville Road  
Suite 400  
Wilmington, Delaware 19808

## **SIXTH**

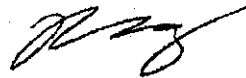
The management of the business and the conduct of the affairs of the Corporation shall be vested in the Board of Directors. The Board of Directors shall have the power to adopt, amend or repeal the by-laws. Election of directors need not be by written ballot unless the By-laws of the Corporation so provides. The books and records of the Corporation may be kept at such place within or without the state of Delaware as the Corporation's By-laws may provide or as designated from time to time by the Board of Directors

## SEVENTH


No director shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing sentence, a director shall be liable to the extent provided by applicable law, (i) for breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this Article Seventh shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

IN WITNESS WHEREOF, the undersigned, being officers and directors of the Corporation, have executed, signed and acknowledged this amended and restated certificate of incorporation this 8<sup>th</sup> day of November, 2006 which replaces in its entirety the Corporation's certificate of incorporation dated August 22, 2006.

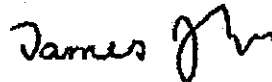
AVEPOINT, INC.



By: \_\_\_\_\_  
Xunkai Gong, Authorized Officer



By: \_\_\_\_\_  
Tianyi Jiang, Authorized Officer



By: \_\_\_\_\_  
James Z. Zhu, Authorized Officer