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In the Office of the  
Secretary of State of Texas

JUN 28 2006

Corporations Section

AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

ALERT LOGIC, INC.

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Pursuant to the provisions of Article 4.07 of the Texas Business Corporation Act (the "TBCA"), the undersigned corporation hereby adopts these Amended and Restated Articles of Incorporation (these "*Restated Articles*") of Alert Logic, Inc. (the "*Corporation*"), which amend, restate and replace in their entirety the prior Amended and Restated Articles of Incorporation of the Corporation (the "*Prior Articles*"), as amended to date.

1. The Prior Articles are hereby amended by the Restated Articles as follows:

A. Article IV is amended and restated to authorize a new series of Preferred Stock, par value \$0.001 per share, designated as Series B Convertible Preferred Stock and to set forth the terms of the Common Stock, Series A Preferred Stock and the Series B Preferred Stock of the Corporation.

B. Article VIII is amended and restated to omit the information regarding the name and address of incorporator of the Corporation and to mark Article VIII as reserved.

2. Each such amendment made by the Restated Articles has been effected in conformity with the provisions of the TBCA and the constituent documents of the Corporation, and such Restated Articles and each such amendment made by the Restated Articles were duly adopted by the Corporation's shareholders effective June 28, 2006 by written consent.

3. The Restated Articles have been approved in the manner required by the TBCA and the constituent documents of the Corporation.

4. The Prior Articles and all amendments and supplements thereto are hereby superseded by the following Restated Articles, which accurately copy the Prior Articles, and all amendments and supplements thereto, as further amended by these Restated Articles:

ARTICLE I.

Name

The name of the corporation is Alert Logic, Inc. (the "*Corporation*").

ARTICLE II.

Duration

The period of the duration of the Corporation is perpetual.

JUN 28 2006

## ARTICLE III.

### Purpose and Powers

Section 1. Purpose. The purpose for which the Corporation is organized is to transact any or all lawful business for which corporations may be incorporated under the Texas Business Corporation Act ("*TBCA*").

Section 2. Statutory Powers. Subject to any limitations or restrictions imposed by the TBCA or other law, or by these Amended and Restated Articles of Incorporation, and solely in furtherance of, but not in addition to, the purpose set forth in Section 1 of this Article III, the Corporation shall have and may exercise all of the powers specified in the TBCA or in any other applicable laws of Texas.

Section 3. Additional Powers. Subject to any limitations or restrictions imposed by the TBCA or other law, or by these Amended and Restated Articles of Incorporation, and solely in furtherance of, but not in addition to, the purpose set forth in Section 1 of this Article III, the purpose enumerated in Section 1 of this Article III shall be construed as creating powers (as well as declaring purpose) as fully as if the text of the clause in Section 1 of this Article III was repeated in this Section.

Section 4. Direction of Purpose and Exercise of Powers by Directors. Subject to any limitations or restrictions imposed by the TBCA or other law, or by these Amended and Restated Articles of Incorporation, the Board of Directors of the Corporation is hereby authorized to direct, by resolution duly adopted, the purpose set forth in Section 1 of this Article III and to exercise all the powers of the Corporation, without previous authorization or subsequent approval by the shareholders; and all parties dealing with the Corporation shall have the right to rely on any action taken by the Corporation pursuant to such action by the Board of Directors.

Section 5. Limiting Clause. Nothing in this Article III is to be construed as authorizing the Corporation to transact any business in the State of Texas expressly prohibited by any law of Texas, or to engage in any activity in Texas which cannot lawfully be engaged in without first obtaining a license under the laws of Texas and such a license cannot be granted to a corporation.

## ARTICLE IV.

### Capital Stock

A. Classes of Stock. The Corporation is authorized to issue two classes of capital stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*." The total number of shares of capital stock that this Corporation is authorized to issue is 24,725,000 shares. 17,000,000 shares shall be Common Stock, no par value per share, and 7,725,000 shares shall be preferred stock, par value \$0.001 per share, 3,425,000 of which shares shall be designated as "Series A Convertible Preferred Stock" (the "*Series A Preferred Stock*") and 4,300,000 of which shares shall be designated as "Series B Convertible Preferred Stock" (the "*Series B Preferred Stock*"). The original purchase price of the Series A Preferred Stock shall be \$0.7248 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to the Series A Preferred Stock) (the

*"Initial Series A Issuance Price"*). The original purchase price of the Series B Preferred Stock shall be \$1.17 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to the Series B Preferred Stock) (the *"Initial Series B Issuance Price"* and, together with the Initial Series A Issuance Price, the *"Initial Issuance Price"*).

The powers, preferences and relative, participating, optional and other special rights of the respective classes of the Corporation's capital stock or the holders thereof and the qualifications, limitations and restrictions thereof are as follows:

Section 1. Dividends.

(a) The holders of Series A Preferred Stock and the holders of Series B Preferred Stock, in preference to the holders of any other capital stock of the Corporation (*"Junior Stock"*), shall be entitled to receive, but only out of assets of the Corporation that are legally available therefor, dividends at the rate of 8% per annum (computed on the basis of a 360-day year having twelve thirty-day months) of the Initial Issuance Price for such series of Preferred Stock. Such dividends shall be cumulative, whether or not declared by the Board of Directors, and dividends thereon shall accrue from and after the date of issuance of such share of Series A Preferred Stock or Series B Preferred Stock.

(b) Accrued and unpaid dividends on each share of Series A Preferred Stock and Series B Preferred Stock shall be payable in full on the earliest to occur of any of the following events: (i) the payment of the Liquidation Preference (as defined in Section 2 below) upon the occurrence of a Liquidation Event (as defined in Section 2 below), (ii) the redemption of such share pursuant to a redemption effected under Section 3 hereof or (iii) the conversion of such share to shares of Common Stock pursuant to a conversion effected under Section 4 hereof. Accrued dividends shall be paid, at the option of the Board of Directors (including each of the Preferred Directors (as defined below)), in either (i) cash or (ii) Common Stock based on the then-current fair market value of the Common Stock as determined in good faith by the Board of Directors (including each of the Preferred Directors).

(c) So long as any shares of Preferred Stock are outstanding, without the consent of the holders of at least seventy percent (70%) of the outstanding shares of the Preferred Stock (voting together as a single class on an as-converted basis), no dividend, whether in cash, securities or other property, shall be declared or paid, nor shall any other distribution be made on any Junior Stock, nor shall any Junior Stock of the Corporation be purchased, repurchased, redeemed, retired or otherwise acquired for value by the Corporation or any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or other entity (each, a *"Person"*) that the Corporation owns or controls at least a majority of the voting shares or voting equity interests of, directly or indirectly (*"Subsidiaries"*) (except for acquisitions of Common Stock by the Corporation pursuant to (i) agreements with employees, advisors, consultants or service providers that permit the Corporation to repurchase such shares upon termination of services to the Corporation or (ii) the exercise of the Corporation's right of first refusal upon a proposed transfer) until all dividends (set forth in Section 1(a) above) on the Preferred Stock shall have been paid. In the event that the Corporation declares or pays any dividends upon the Common Stock (whether payable in cash, securities or other property), the Corporation shall also declare or pay, as the case

may be, to the holders of the Preferred Stock on a *pari passu* basis, at the same time it declares or pays, as the case may be, such dividends to the holders of Common Stock, the dividends that would have been declared or paid, as the case may be, with respect to the Common Stock issuable upon conversion of the Preferred Stock had all of the Preferred Stock been converted into shares of Common Stock immediately prior to the record date for such dividend, or if no record date is fixed, the date as of which the record holders of Common Stock entitled to such dividends are to be determined.

Section 2. Liquidation Rights.

(a) **Preference.** Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (each, a "**Liquidation Event**"), before any distribution or payment shall be made to the holders of any Junior Stock, each holder of Preferred Stock shall be entitled to be paid out of the assets of the Corporation an amount in cash per share of Preferred Stock equal to the Initial Issuance Price for such series of Preferred Stock plus an amount equal to all accrued or declared but unpaid dividends on such share (collectively, the "**Liquidation Preference**"). If, upon any Liquidation Event, the assets of the Corporation shall be insufficient to make payment in full to all holders of Preferred Stock of the Liquidation Preference, then the entire assets of the Corporation legally available for distribution shall be distributed on a pro rata basis among the holders of Preferred Stock in proportion to the full Liquidation Preference they would otherwise be entitled to receive pursuant to this Section 2(a).

(b) **Remaining Assets.** After the payment of the full Liquidation Preference as set forth in Section 2(a) above, the assets of the Corporation ~~legally available for distribution~~, if any, shall be distributed ratably to the holders of the Common Stock and the Preferred Stock (as determined on an as-converted basis).

(c) **Additional Liquidation Events.** The following events shall each be considered a Liquidation Event under this Section 2:

(i) any consolidation or merger of the Corporation with or into any other corporation or Person, or any other corporate reorganization, in which the shareholders of the Corporation immediately prior to such consolidation, merger, reorganization, or any similar corporate transaction, own less than 50% of the Corporation's voting power immediately after such consolidation, merger or reorganization, or any other transaction or series of related transactions to which the Corporation is a party in which in excess of 50% of the Corporation's voting power is transferred, excluding any consolidation or merger effected exclusively to change the domicile of the Corporation (each, an "**Acquisition**"); or

(ii) (x) any sale, transfer, lease, assignment, conveyance or other disposition of all or substantially all of the assets of the Corporation and its Subsidiaries on a consolidated basis (measured either by book value in accordance with U.S. generally accepted accounting principles consistently applied or by Fair Market Value (as defined below) at the time of the transaction) to a third party in any transaction or series of related transactions; or (y) the exclusive license of all or substantially all of the intellectual property of the Corporation to a third party in any transaction or a series of related transactions (each, an "**Asset Transfer**").

(d) **Valuation of Consideration.** If the consideration received by the Corporation is other than cash in connection with any of the events set forth above in subsection (c), its value will be deemed its fair market value ("*Fair Market Value*") on the closing date of any such event, as determined in good faith by the Board of Directors including each of the Preferred Directors (except in the case of (i)(B) or (ii) below). Fair Market Value of any securities shall be determined as follows:

(i) Securities not subject to an investment letter or other similar restrictions on free marketability covered by (ii) below:

(A) If such securities are traded on a securities exchange, the Fair Market Value shall be deemed to be the average of the closing prices of such securities on such exchange as of 4:00 p.m. New York time, or, if there have been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all exchanges as of 4:00 p.m. New York time, or, if such securities are not listed on a securities exchange, the average of the representative bid and asked prices quoted on the Nasdaq Stock Market as of 4:00 p.m., New York time, or, if on any day such security is not quoted on the Nasdaq Stock Market, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated or any similar successor organization, in each such case averaged over a period of 30 days consisting of the business day as of which Fair Market Value is being determined and the 29 consecutive business days prior to such day;

(B) If at any time such security is not listed on any securities exchange or quoted in the Nasdaq Stock Market System or the over-the-counter market as reported by the National Quotation Bureau, the Fair Market Value shall be the fair value thereof, as determined by the Board of Directors and the holders of at least seventy percent (70%) of the voting power of the then-outstanding shares of Preferred Stock (voting together as a single class on an as-converted basis). If such parties are unable to reach agreement within a reasonable period of time, such fair value shall be determined by an independent appraiser experienced in valuing securities jointly selected by the Corporation's Board of Directors and holders of at least seventy percent (70%) of the voting power of the then-outstanding Preferred Stock (voting together as a single class on an as-converted basis). The determination of the appraiser shall be final and binding upon the parties and the Corporation shall pay the fees and expenses of such appraiser.

(ii) The method of valuation of securities subject to an investment letter or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate of the issuer of such securities) shall be to make an appropriate discount from the market value determined as above in (i) (A) or (B) to reflect the approximate Fair Market Value thereof, as determined by the Board of Directors, including each of the Preferred Directors.

(e) **Notice of Liquidation Event.** The Corporation shall give each record holder of Preferred Stock written notice of any impending Liquidation Event no later than 20 days prior to the shareholders' meeting called to approve such transaction, or 20 days prior to the closing of such Liquidation Event, whichever is earlier, and shall also notify such holders in writing of the final approval of such Liquidation Event. The first of such notices shall describe the material terms and

conditions of the impending Liquidation Event (including, without limitation, the amount of proceeds to be paid to each share in connection with the Liquidation Event) and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes to the information set forth in such notice. The Liquidation Event shall in no event take place sooner than 20 days after the Corporation has given (the first notice provided for herein or sooner than 20 days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that represent at least seventy percent (70%) of the voting power of all then outstanding shares of Preferred Stock (voting together as a single class on an as-converted basis) and that are entitled to such notice rights or similar notice rights.

(f) **Effect of Noncompliance.** If the requirements of Section 2(e) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(e) hereof.

### Section 3. Redemption.

(a) **Preferred Stock Redemption.** At any time after June 30, 2011, the holders of at least seventy percent (70%) of the then-outstanding Preferred Stock (voting together as a single class on an as-converted basis) may elect to require the Corporation to redeem, from any source of funds legally available therefor, all outstanding shares of the Preferred Stock (the "**Redemption Option**") in three equal annual installments. Such redemption of the Preferred Stock shall be effected at a price per share (the "**Redemption Price**"), paid in cash, equal to the greater of (i) Liquidation Preference, inclusive of all accrued or declared but unpaid dividends on such share, for such series of Preferred Stock and (ii) the then-current fair market value of such series of Preferred Stock as determined in good faith by Board of Directors, including each of the Preferred Directors.

(b) **Mechanics of Redemption.** Subject to Section 3(d), the Redemption Option shall be exercised by written notice to the Corporation (the "**Redemption Request**") setting forth the proposed date for the first installment of the redemption of the Preferred Stock, which date (the "**First Redemption Date**") shall not be fewer than 30 nor more than 60 days from the date of such notice. The First Redemption Date, and each of the two subsequent anniversary dates of the First Redemption Date are each referred to herein as a "**Redemption Date**." If any scheduled Redemption Date falls on a Saturday, Sunday or legal holiday observed in the State of Texas, the Redemption Date shall be the next applicable business day. Within 15 days of the Corporation's receipt of the Redemption Request, the Corporation shall mail, at least 15 days but not more than 30 days prior to the Redemption Date, a notice (a "**Redemption Notice**") by means of first class mail, postage paid, addressed to the holders of record of the shares of Preferred Stock, at their respective addresses then appearing on the books of the Corporation. The Redemption Notice shall notify such holder of the redemption to be effected and shall specify (i) the number of shares of Preferred Stock to be redeemed from such holder, (ii) the applicable First Redemption Date, (iii) the applicable Redemption Price, and (iv) the place at which such holder shall surrender its shares of Preferred Stock. The Corporation shall effect such redemptions by paying the applicable Redemption Price in

cash in exchange for the shares of Preferred Stock to be redeemed. With respect to the second and third Redemption Dates, the Corporation shall mail, at least 15 days but not more than 30 days prior to each such Redemption Date, a reminder notice by means of first class mail, postage paid, addressed to the holders of record of the shares of Preferred Stock, at their respective addresses then appearing on the books of the Corporation, which reminder notice shall contain the information required to be contained in the Redemption Notice.

(c) **Failure to Redeem Shares on a Redemption Date.** If upon the occurrence of a Redemption Date, the assets of the Corporation legally available to be distributed among the holders of Preferred Stock for their shares of Preferred Stock to be redeemed on such Redemption Date shall be insufficient to permit the payment to such holders of the full aforesaid amounts, then all of the assets of the Corporation legally available for distribution shall be distributed ratably among the holders of Preferred Stock in proportion to the applicable Redemption Price amount each such holder is otherwise entitled to receive. At any time thereafter when additional assets of the Corporation are legally available for the redemption of Preferred Stock, such assets shall immediately be used to redeem the balance of the shares of Preferred Stock that the Corporation has become obligated to redeem on the Redemption Date but which it has not redeemed.

(d) **Priority of Redemption.** The Corporation shall not redeem shares of Common Stock or any other shares of its capital stock, if any, prior to the redemption of all outstanding shares of Preferred Stock. Any redemption effected on a particular Redemption Date pursuant to this Section 3 shall be made on a pro rata basis among the holders of Preferred Stock in proportion to the number of shares of Preferred Stock owned by each such holder.

(e) **Delivery of Certificates.** The holder of any shares of Preferred Stock to be redeemed pursuant to the provisions of this Section 3 shall not be entitled to receive payment of the applicable Redemption Price for such shares until such holder shall cause to be delivered, to the place specified in the Redemption Notice, (i) the certificates representing such shares of Preferred Stock (or delivery of a customary affidavit of loss with an indemnity reasonably satisfactory to the Corporation) and (ii) stock powers or other transfer instrument(s) reasonably satisfactory to the Corporation and sufficient to transfer such shares of Preferred Stock to the Corporation free of any adverse interest.

(f) **Deposit.** At least 10 days prior to a Redemption Date, the Corporation shall deposit the Redemption Price for the shares of Preferred Stock to be redeemed on such Redemption Date with a bank or trust corporation having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to pay the applicable Redemption Price, for such shares to their respective holders on or after the applicable Redemption Date upon receipt of notification from the Corporation that such holder has surrendered its share certificate to the Corporation pursuant to Section 3(e) above. As of the date of such deposit (even if prior to the Redemption Date but after the date the Redemption Notice is given), the deposit shall constitute full payment of the shares to their holders plus all accrued and unpaid dividends thereon, and from and after the date of the deposit, the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be shareholders with respect to such shares and shall have no rights with respect thereto except the

rights to receive from the bank or trust corporation payment of the applicable Redemption Price, of the shares, upon surrender of their certificates therefor, and the right to convert such shares as provided in Section 4 hereof. Such instructions shall also provide that any money deposited by the Corporation pursuant to this Section 3(f) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section 4 hereof prior to the applicable Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any money deposited by the Corporation pursuant to this Section 3(f) remaining unclaimed at the expiration of one year following the applicable Redemption Date shall thereafter be returned to the Corporation upon its request expressed in a resolution of its Board of Directors.

(g) **Termination of Preferred Stock.** Upon the redemption of any share of Preferred Stock pursuant to this Section 3, such share shall (provided the applicable Redemption Price payable upon redemption of such share has been paid or properly provided for in full) be deemed to cease to be outstanding, and all rights of any Person other than the Corporation in such share shall be extinguished on the applicable Redemption Date (including all rights to receive future dividends with respect to such share), except for the right to receive the Redemption Price, in accordance with the provisions of this Section 3, subject to applicable escheat laws.

(h) **Conversion of Preferred Stock.** In the event that any shares of Preferred Stock shall be converted into Common Stock prior to the close of business on any Redemption Date, (i) the Corporation shall not be obligated nor have the right to redeem such shares and (ii) any funds that shall have been deposited for the payment of the Redemption Price with respect to such shares shall be returned to the Corporation forthwith upon such conversion (less declared dividends payable to holders of shares of Preferred Stock on the record date for the payment of such dividends, regardless of whether such shares are converted subsequent to such record date).

Section 4. Conversion. The holders of Preferred Stock shall have the following conversion rights (the "**Conversion Rights**"):

(a) **Optional Conversion.** Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at the principal corporate office of the Corporation or any transfer agent for such shares, into such number of validly issued, fully paid and nonassessable shares of Common Stock as is determined, with respect to each share of Preferred Stock, by dividing the (A) Initial Issuance Price for such series of Preferred Stock by (B) the applicable Conversion Price (as defined herein) for such series of Preferred Stock in effect on the date the certificate representing such share is surrendered for conversion. The initial conversion price per share for the Preferred Stock (the "**Conversion Price**") shall be the Initial Issuance Price for such series of Preferred Stock; provided, however, that the applicable Conversion Price for each series of Preferred Stock shall be subject to adjustment as set forth in Section 4(d) below.

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted by the Corporation into shares of Common Stock at the applicable Conversion Price in effect immediately upon the earlier of: (i) except as provided in Section 4(c) below, the Corporation's sale of Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "**Securities Act**"), resulting in aggregate gross proceeds (after deducting applicable underwriting discounts and



commissions) of at least \$35 million; provided, however, that the per share offering price is at least \$5.85 (a "***Qualified Public Offering***") (subject to adjustment for all stock dividends, stock splits, reorganizations, recapitalizations and the like occurring after the Initial Series B Issuance Date, as defined below), or (ii) the date specified by written consent or agreement of the holders of at least seventy percent (70%) of the then-outstanding shares of Preferred Stock (voting together as a single class on an as-converted basis).

(c) **Mechanics of Conversion.** Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock pursuant to Section 4(a) above or upon the occurrence of the events specified in Section 4(b) above, as the case may be, such holder shall surrender the certificate or certificates therefor, duly endorsed (or deliver a customary affidavit of loss with indemnity satisfactory to the Corporation) at the principal corporate office of the Corporation or any transfer agent for the Preferred Stock, and in the case of Section 4(a) above, shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued; provided, however, that any failure by a holder to comply with these provisions shall not have any effect on the automatic conversion of such holder's shares, which shall in any event convert in accordance with Section 4(b) above. The Corporation shall, as soon as practicable thereafter, pay all declared or accrued and unpaid dividends on such shares of Preferred Stock and issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. The issuance of certificates for shares of Common Stock upon conversion of the Preferred Stock shall be made without charge to the holders of Preferred Stock for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of the 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, 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 as of such date. The Corporation shall not close its books against the transfer of Preferred Stock or of shares of Common Stock issued or issuable upon conversion of the Preferred Stock in any manner that interferes with the timely conversion of the Preferred Stock. The Corporation shall assist and cooperate with any holder of Preferred Stock required to make any governmental filings or obtain any governmental approval prior to or in connection with the conversion of shares of Preferred Stock (including, without limitation, making any filings required to be made by the Corporation). Upon conversion of shares of Preferred Stock into Common Stock, the Corporation shall take all such actions as are necessary in order to ensure that such shares of Common Stock are validly issued, fully paid and nonassessable, and are free and clear of all liens, taxes, charges or encumbrances with respect to the issuance thereof. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act, the conversion shall be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the Person(s) entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) **Adjustments to the Conversion Prices for Certain Dilutive Issuances.**

(i) **Special Definitions.** For purposes of this Section 4(d), the following definitions shall apply:

(A) ***"Additional Shares of Common Stock"*** shall mean all shares of Common Stock issued (or, pursuant to Section 4(d)(iii), deemed to be issued) by the Corporation after the date on which the first shares of Series B Preferred Stock were issued (the ***"Initial Series B Issuance Date"***), other than shares of Common Stock issued or issuable:

- (1) upon conversion of shares of the Preferred Stock;
- (2) to officers, directors or employees of, or consultants to, the Corporation as compensation for services, directly or pursuant to stock option plans or agreements on terms approved by a majority of the members of the Board of Directors, including each of the Preferred Directors, but not exceeding 2,498,711 shares of Common Stock (net of any cancellations, expirations or repurchases and as adjusted for any stock dividend, stock split or combination with respect to such shares) unless approved a majority of the members of the Board of Directors, including each of the Preferred Directors;
- (3) by the Corporation to the public pursuant to a Qualified Public Offering;
- (4) in connection with the Corporation's acquisition of any company or business where, in each case, such acquisition is approved by a majority of the members of the Board of Directors, including the Preferred Directors;
- (5) to banks or equipment lessors in connection with the Corporation's credit arrangements where, in each case, such issuance is for other than primarily equity financing purposes and is unanimously approved by the Board of Directors;
- (6) upon the exercise of warrants that were issued by the Corporation to WoodRock & Co., Patrick Linbeck, Silicon Valley Bank or holders of the Series A Preferred Stock, in each case prior to or on the Initial Series B Issuance Date;
- (7) as a dividend or distribution on the Preferred Stock;
- (8) by reason of a dividend, stock split, combination, recapitalization, reclassification, reorganization, merger, consolidation or other change that is covered by Section 4(e), 4(f), 4(g), 4(h) or 4(i) below; or
- (9) for which adjustment of the applicable Conversion Price has previously been made pursuant to Section 4(d)(iv).

(B) ***"Convertible Securities"*** shall mean any evidences of indebtedness, shares (other than Common Stock and Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(C) "*Options*" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(ii) **No Adjustment of Conversion Prices.** Notwithstanding any provision herein to the contrary, no adjustment in the applicable Conversion Price for a series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section 4(d)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price for such series of Preferred Stock, in effect on the date of, and immediately prior to, such issuance.

(iii) **Deemed Issuance of Additional Shares of Common Stock.** In the event the Corporation at any time or from time to time after the Initial Series B Issuance Date shall issue any Options (excluding any Options described by subsection (d)(i)(A)(2) above) or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issuance or, in case such a record date shall have been fixed, as of the close of business on such record date; provided, further, that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustments in the applicable Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the applicable Conversion Price computed upon the original issuance thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the applicable Conversion Price shall affect Common Stock previously issued upon conversion of such series of Preferred Stock); and

(C) no readjustment pursuant to clause (A) or (B) above shall have the effect of increasing the applicable Conversion Price to an amount that exceeds the lesser of (1) the applicable Conversion Price for such series of Preferred Stock on the Initial Series B Issuance Date and (2) the applicable Conversion Price for such series of Preferred Stock that would have resulted from any issuance of Additional Shares of Common Stock between the Initial Series B Issuance Date and such readjustment date.

(iv) **Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.** In the event the Corporation at any time or from time to time after the Initial Series B Issuance Date shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii)) without consideration or for consideration per share less than the applicable Conversion Price for a series of Preferred Stock, in effect on the date of and immediately prior to such issue, then the applicable Conversion Price for such series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the applicable Conversion Price for such series of Preferred Stock, then in effect by a fraction, (A) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the applicable Conversion Price for such series of Preferred Stock, in effect immediately prior to such issuance, and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of such Additional Shares of Common Stock so issued. For purposes of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issuance shall be calculated on a fully diluted basis, as if all Convertible Securities had been fully converted into shares of Common Stock and any outstanding Options had been fully exercised (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date.

(v) **Determination of Consideration.** For purposes of this Section 4(d), the consideration received by the Corporation in connection with the issuance of any Additional Shares of Common Stock shall be computed as follows:

(A) **Cash and Property.** Such consideration shall:

(1) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest or accrued dividends;

(2) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issuance, as determined in good faith by the Board of Directors and approved by the holders of at least seventy percent (70%) of the then issued and outstanding shares of Preferred Stock (voting together as a single class on an as-converted basis); and

(3) in the event Additional Shares of Common Stock are issued together with other securities or property of the Corporation for consideration which covers both cash and property, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board of Directors and approved by the holders of at least seventy percent (70%) of the then issued and outstanding shares of Preferred Stock (voting together as a single class on an as-converted basis).

(B) **Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been

issued pursuant to Section 4(d)(iii) relating to Options and Convertible Securities shall be determined by dividing:

(1) the total amount, if any, received or receivable by the Corporation as consideration for the issuance of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(2) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

(e) **Adjustment for Stock Splits and Combinations.** In the event the Corporation at any time or from time to time after the Initial Series B Issuance Date effects a subdivision (by any stock split or otherwise) of the outstanding Common Stock without a corresponding subdivision of the Preferred Stock, the applicable Conversion Price for such series of Preferred Stock in effect immediately before such subdivision shall be proportionately decreased. Conversely, in the event the Corporation at any time or from time to time after the Initial Series B Issuance Date combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Preferred Stock, the applicable Conversion Price for such series of Preferred Stock in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(e) shall become effective at the close of business on the date such subdivision or combination becomes effective.

(f) **Adjustment for Common Stock Dividends and Distributions.** In the event the Corporation at any time or from time to time after the Initial Series B Issuance Date declares, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the applicable Conversion Price for such series of Preferred Stock that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price for such series of Preferred Stock then in effect by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date and (ii) the denominator of which is (A) the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, plus (B) the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the applicable Conversion Price for such series of Preferred Stock shall be recomputed accordingly as of the close of business on such record date and thereafter the applicable Conversion Price for such

series of Preferred Stock shall be adjusted pursuant to this Section 4(f) to reflect the actual payment of such dividend or distribution.

(g) **Adjustments for Other Dividends and Distributions.** Subject to Section A.1, in the event the Corporation at any time or from time to time after the Initial Series B Issuance Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than shares of Common Stock) or in cash or other property (other than cash out of earnings or earned surplus, determined in accordance with generally accepted accounting principles), then and in each such event, the holders of Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were holders of shares of Common Stock of the Corporation in which their shares of Preferred Stock are convertible as of the record date fixed for determination of the holders of Common Stock of the Corporation entitled to receive such dividend or distribution.

(h) **Adjustments for Recapitalizations, Reclassifications or Other Changes.** If at any time after the Initial Series B Issuance Date, the Common Stock issuable upon the conversion of the Preferred Stock is changed into the same or a different number of shares of any other class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer or a subdivision, combination, or reorganization provided for elsewhere in this Section 4), in any such event each holder of Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property that would be receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of each series of Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the applicable Conversion Price then in effect and the number of shares issuable upon conversion of each series of Preferred Stock) shall be applicable after that event as nearly equivalent as prior to that event as may be practicable.

(i) **Adjustments for Reorganizations, Mergers or Consolidations.** If at any time after the Initial Series B Issuance Date, there is a capital reorganization of the Common Stock or a merger or consolidation of the Corporation with or into another Person (other than an Acquisition or Asset Transfer) as a part of such capital reorganization, merger or consolidation, provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise to which a holder of Common Stock, deliverable upon conversion thereof, would have been entitled on such capital reorganization, merger or consolidation, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Preferred Stock after such capital reorganization, merger or consolidation to the end that the provisions of this Section 4 (including adjustment of the applicable Conversion Price for such series of Preferred Stock) then in effect and

the number of shares issuable upon conversion of the Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(j) **Adjustment Threshold and Recording.** No adjustment in the applicable Conversion Price for a series of Preferred Stock need be made if such adjustment would result in a change in such Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in such applicable Conversion Price. All calculations under this Section 4 shall be made to the nearest one hundredth of a cent (\$0.0001) or to the nearest one hundredth (1/100) of a share, as the case may be.

(k) **Other Distributions.** In the event that the Corporation, at any time or from time to time after the Initial Series B Issuance Date, declares a distribution payable in securities of other Persons, evidences of indebtedness issued by the Corporation or other Persons, or assets of the Corporation (excluding cash dividends), then in each such case for the purpose of this Section 4(k), the holders of the Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(l) **No Impairment.** The Corporation shall not, by amendment of these Amended and Restated Articles of Incorporation (by merger, consolidation or otherwise) or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or otherwise, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of Preferred Stock against impairment.

(m) **No Fractional Shares.** No fractional shares shall be issued upon the conversion of any share or shares of Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share (with 0.5 being rounded up). 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 which the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(n) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of a Conversion Price pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a certificate setting forth (A) such adjustment and readjustment, (B) the applicable Conversion Price for such series of Preferred Stock at the time in effect and (C) the number of shares of Common Stock and the amount of other property, if any, which at the time would be received upon the conversion of a share of Preferred Stock.

(o) **Notices of Record Date.** In the event of 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, 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, the Corporation shall mail to each holder of Preferred Stock, at least 20 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(p) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation shall take such corporate action as may be necessary, in the reasonable opinion of its counsel, to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, using its best efforts to obtain the requisite shareholder approval of any necessary amendment to these Amended and Restated Articles of Incorporation. The Corporation shall also use its best efforts to take all such actions as may be necessary to ensure that all shares of Common Stock issuable upon conversion of the Preferred Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any securities exchange or quotation system upon which shares of Common Stock may be listed or quoted, as the case may be; provided, however, that this sentence shall not require the Corporation to register any of the shares of Common Stock issuable upon conversion of the Preferred Stock under the federal securities laws. The Corporation shall use its best efforts to not take any action that would cause the number of authorized but unissued shares of Common Stock issuable upon conversion of the Preferred Stock to be less than the number of such shares required to be reserved hereunder for conversion of Preferred Stock.

(q) **Certain Events.** If any event occurs of the type contemplated by the provisions of this Section 4 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's Board of Directors shall make an appropriate adjustment in the applicable Conversion Price so as to protect the rights of the holders of Preferred Stock; provided, that no such adjustment shall increase the applicable Conversion Price as otherwise determined pursuant to this Section 4 or decrease the number of shares of Common Stock issuable upon conversion of each share of Preferred Stock.

(r) **Notices.** Any notice, request, demand or other communication required or permitted to be given to a holder of Preferred Stock pursuant to the provisions of these Amended and Restated Articles of Incorporation will be in writing and will be effective and deemed given under this Section 4 on the earliest of: (i) the date of personal delivery, (ii) the date of transmission by facsimile, with confirmed transmission and receipt, (iii) two days after deposit with a nationally-recognized courier or overnight service and (iv) five days after mailing via certified mail, return



receipt requested. All notices not delivered personally or by facsimile will be sent with postage and other charges prepaid and properly addressed to the party to be notified at the address set forth for such party in the records of the Corporation. Any holder of Preferred Stock (and such holder's permitted assigns) may change such holder's address for receipt of future notices hereunder by giving written notice to the Corporation.

**Section 5. Voting Rights.**

(a) **General.** Except as otherwise provided herein or required by law, holders of the Preferred Stock shall be entitled to vote together with the shares of the Common Stock of the Corporation and not as a separate class on all matters submitted to a vote of the holders of shares of Common Stock, and may act by written consent in the same manner as the Common Stock, with each holder of shares of Preferred Stock entitled to the number of votes as shall be equal to the number of shares of Common Stock into which such holder's aggregate number of shares of Preferred Stock are convertible pursuant to Section 4 immediately after the close of business on the record date for the determination of the shareholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken. Each holder of Preferred Stock shall be entitled, notwithstanding any provision hereof to the contrary, to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula shall be rounded to the nearest whole number (with one-half rounded upward to one).

(b) **Preferred Stock Protective Provisions: General.** In addition to any other vote or consent required herein or by law, the Corporation shall not, without first obtaining the approval of the holders of at least seventy percent (70%) of the then-outstanding shares of Preferred Stock, voting together as a single class on an as-converted basis:

(i) take any action, whether by merger, consolidation, conversion or otherwise, that amends, repeals, alters or waives any provisions of these Amended and Restated Articles of Incorporation or the Corporation's Bylaws;

(ii) take any action, whether by merger, consolidation, conversion or otherwise, that alters or changes the rights, powers, preferences or privileges of, or any restrictions provided for the benefit of, the shares of Preferred Stock;

(iii) increase or decrease the aggregate number of authorized shares of Common Stock or Preferred Stock;

(iv) reclassify, or take any action to reclassify, whether by merger, consolidation, conversion or otherwise, any of the outstanding shares of the Corporation's capital stock so as to have rights, powers, preferences or privileges that are senior to or otherwise having a preference over, or that are on a parity with, the Preferred Stock with respect to voting, dividends, redemption, conversion or liquidation rights;

(v) authorize or issue, or obligate itself to issue, whether by merger, consolidation, conversion or otherwise, any other equity security of the Corporation, including any

other security convertible into or exercisable or exchangeable for any equity security of the Corporation, having a preference over, or being on a parity with, the Preferred Stock with respect to voting, dividends, redemption, conversion or liquidation rights;

(vi) effect any increase or decrease in the authorized number of members of the Corporation's Board of Directors;

(vii) increase the number of shares that are reserved for issuance under the Corporation's 2005 Stock Option Plan, or amend or modify such plan or any other stock option plan or employee stock ownership plan, adopt any new stock option plan or employee stock ownership plan or issue any shares of capital stock of the Corporation to the Corporation's employees other than pursuant to the Corporation's 2005 Stock Option Plan;

(viii) effect, or take any action to effect, whether by merger, consolidation, conversion or otherwise, any direct issuance of shares of the Corporation's capital stock that reflects an ownership interest of more than one percent (1%) of the Corporation's issued and outstanding Common Stock, as determined on a fully-diluted basis, or the grant of any security that is exercisable or convertible for such shares of the Corporation's capital stock, or propose any such issuance or grant or commit to make any such issuance or grant, to a single recipient, unless in each case such issuance or grant is approved by a majority of the members of the Board of Directors, including each of the Preferred Directors;

(ix) pay, or agree or commit to pay, any employee or consultant cash compensation in any calendar year period in an amount equal to or in excess of \$130,000, or effect, or take any action to effect, any increase in the amount of cash compensation payable to any employee or consultant, including under any compensation plan, agreement or other arrangement, wherein such employee or consultant will or may receive cash compensation equal to or more than \$130,000 in any calendar year period, unless in each case such compensation amount is approved by a majority of the members of the Board of Directors, including each of the Preferred Directors;

(x) effect any voluntary dissolution, liquidation or winding up of the Corporation or other discontinuance of the business of the Corporation;

(xi) take any action that results in the payment or declaration of any dividend or distribution on any of its capital stock or other equity securities (other than dividends on the Preferred Stock pursuant to the terms of these Amended and Restated Articles of Incorporation or dividends payable solely in shares of Common Stock);

(xii) incur or assume any liability of, or enter into any other payment obligation that commits the Corporation to pay, \$100,000 or more unless, in each case, (i) such liability or other payment obligation is incurred or committed to in accordance with the Corporation's written business plan as it exists as of the Initial Series B Issuance Date and (ii) such liability or other payment obligation is approved by a majority of the members of the Board of Directors, including each of the Preferred Directors;

(xiii) incur or assume any indebtedness of \$100,000 or more, either individually or in the aggregate, unless in each case such indebtedness is approved by a majority of the members of the Board of Directors, including each of the Preferred Directors;

(xiv) dispose or acquire any interest in any Person or business (whether by purchase of assets, purchase of stock, merger or otherwise) or enter into any joint venture or make any investment in another Person involving consideration in the amount of \$100,000 or more unless in each case such liability, indebtedness or other obligation is approved by a majority of the members of the Board of Directors, including each of the Preferred Directors; *provided, however*, that in the event of an Asset Transfer or Acquisition, this Section 5(b)(xiv) shall be inapplicable and the provisions of Section 5(c) below shall apply.

(xv) enter into the ownership, active management or operation of any business, whether by merger, consolidation or otherwise, other than the business of the Corporation as it is carried out as of the Initial Series B Issuance Date or otherwise effect any material changes to the Corporation's business plan as it exists as of the Initial Series B Issuance Date;

(xvi) enter into any contract or arrangement or engage in any transaction or series of transactions with any officer, director or shareholder who holds or controls more than five percent (5%) of the issued and outstanding Common Stock (as determined on a fully diluted basis) unless in each case such liability, indebtedness or other obligation is approved by a majority of the members of the Board of Directors, including each of the Preferred Directors;

(xvii) take any action, whether by merger, consolidation, conversion or otherwise, that results in the purchase, repurchase, redemption, retirement or other acquisition for value by the Corporation or any Subsidiary of any Junior Stock, other than acquisitions of Common Stock by the Corporation pursuant to agreements with employees, advisors, consultants or service providers that permit the Corporation to repurchase such shares upon termination of services to the Corporation or acquisitions of Common Stock by the Corporation upon the exercise of the Corporation's right of first refusal upon a proposed transfer;

(xviii) mortgage, pledge or create a security interest in, or permit any subsidiary to mortgage, pledge or create a security interest in, all or substantially all of the property owned by Corporation or such subsidiary, unless approved by a majority of the Board of Directors, including each of the Preferred Directors; and

(xix) make any loans or advances to employees (other than advances for travel, entertainment or other similar expenses incurred by the employee in the ordinary course of business), unless approved by a majority of the Board of Directors, including each of the Preferred Directors.

(c) **Preferred Stock Protective Provisions: Asset Transfers or Acquisitions.**  
In addition to any other vote or consent required herein or by law:

(i) until January 1, 2008, the Corporation shall not effect an Asset Transfer or Acquisition, or enter into any agreement to effect an Asset Transfer or Acquisition,

relating to the Corporation or any of its Subsidiaries, without first obtaining the approval of the holders of at least (A) sixty percent (60%) of the then-outstanding shares of Preferred Stock, voting together as a single class on an as-converted basis, for any such Asset Transfer or Acquisition in which the aggregate net proceeds to be paid to the Corporation's shareholders pursuant to Section 2 above are equal to or greater than \$60 million and (B) seventy percent (70%) of the then-outstanding shares of Preferred Stock, voting together as a single class on as-converted basis, for any such Asset Transfer or Acquisition in which the aggregate net proceeds to be paid to the Corporation's shareholders pursuant to Section 2 above are less than \$60 million; and

(ii) from and after January 1, 2008, the Corporation shall not effect an Asset Transfer or Acquisition, or enter into any agreement to effect an Asset Transfer or Acquisition, relating to the Corporation or any of its Subsidiaries, without first obtaining the approval of the holders of at least seventy percent (70%) of the then-outstanding shares of Preferred Stock, voting together as a single class on as-converted basis.

(d) **Election of Directors.** For so long as any shares of Preferred Stock remain outstanding, the holders of Preferred Stock, voting together as a single class, shall be entitled to elect three (3) members of the Corporation's Board of Directors (the "*Preferred Directors*") at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office any such director and to fill any vacancy caused by the resignation, death or removal of any such director. The holders of Common Stock, voting together as a single class, shall be entitled to elect one (1) member of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director. The holders of Common Stock and Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect the remaining members of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office any such director and to fill any vacancy caused by the resignation, death or removal of any such director. Each director shall hold office until the next meeting or the next consent of the Corporation's shareholders for the election of directors and until such director's successor is duly elected and qualified, or until such director's earlier resignation or removal.

**Section 6. Replacement.** Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided, that if the holder is a financial institution or other institutional investor its own agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

Section 7.     **Common Stock.**

(a)     **Dividend Rights.** Subject to the provisions of Section 1 and Section 5, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, but only out of assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b)     **Liquidation Rights.** Upon any liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2.

(c)     **Redemption.** The Common Stock is not redeemable.

(d)     **Voting Rights.** The holder of each share of Common Stock shall have the right to one vote per share, and shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by these Amended and Restated Articles of Incorporation and by law.

B.     **Cumulative Voting Denied.** No shareholder shall have the right to cumulate such shareholder's votes for the election of directors or upon any other matter.

C.     **Denial of Preemptive Rights.** No holder of any shares of any class of stock of the Corporation shall have a preemptive right or preferential right or be entitled as a matter of right, as such holder, to subscribe for, purchase or receive any shares of stock or any rights or options of the Corporation which it may issue or sell, whether out of the number of shares now or hereafter authorized by these Amended and Restated Articles of Incorporation or by amendment thereof or out of the shares of the stock of the Corporation acquired by the Corporation after the issuance thereof, nor shall any holder of any shares of any class of stock of the Corporation be entitled as a matter of right to subscribe for, purchase or receive any bonds, obligations, evidences of indebtedness or other securities which the Corporation may issue or sell that shall be convertible into or exchangeable for stock or to which shall be attached or appertain to any warrant or warrants or other instrument or instruments that shall confer upon the holder or owner of such bond, obligation, evidence of indebtedness, debenture or other security the right to subscribe for, purchase or receive from the Corporation any shares of the Corporation's capital stock; but all such additional issues of stock, rights and options, or of bonds, obligations, evidences of indebtedness, debentures or other securities convertible into or exchangeable for stock, or to which warrants shall be attached or appertain or which shall confer upon the holder the right to subscribe for, purchase or receive any shares of stock, may be issued and disposed of by the Board of Directors of the Corporation to such persons, firms or corporations as in its absolute discretion it may deem advisable. The acceptance of stock in the Corporation shall be a waiver of any preemptive or preferential right which in the absence of this provision might otherwise be asserted by shareholders of the Corporation or any of them.

## ARTICLE V.

### Initial Consideration for Issuance of Shares

The Corporation will not commence business until it has received for the issuance of its shares consideration of the value of at least One Thousand and No/100 (\$1,000) Dollars, consisting of money paid, labor done or property actually received.

## ARTICLE VI.

### Registered Office and Agent

Section 1. Registered Office. The street address of the Corporation's registered office in the State of Texas is 4888 Loop Central, Suite 440, Houston, Texas 77081.

Section 2. Registered Agent. The name of the registered agent of the Corporation is Christopher Granberry.

## ARTICLE VII.

### Data Respecting Directors

Section 1. Board of Directors. Subject to the protective provisions of the Preferred Stock set forth in Section 5 of Section (A) of Article IV, the number of directors constituting the entire Board of Directors of the Corporation shall from time to time be fixed by, or in the manner provided in, the bylaws of the Corporation. The number of directors constituting the Board of Directors of the Corporation as of the date hereof is seven (7), none of whom needs to be a resident of the State of Texas or a shareholder of the Corporation.

Section 2. Names and Addresses. The names and addresses of the persons who are currently serving as directors of the Corporation until the next annual meeting of the shareholders of the Corporation, or until their successors shall have been elected and qualify, are:

Jay Campion  
4888 Loop Central, Suite 440  
Houston, Texas 77081

Steve Kahan  
4888 Loop Central, Suite 440  
Houston, Texas 77081

Blair Garrou  
4888 Loop Central, Suite 440  
Houston, Texas 77081

Edward Lou  
4888 Loop Central, Suite 440  
Houston, Texas 77081

Misha Govshteyn  
4888 Loop Central, Suite 440  
Houston, Texas 77081

David Power  
4888 Loop Central, Suite 440  
Houston, Texas 77081

Christopher H. Granberry  
4888 Loop Central, Suite 440  
Houston, Texas 77081

Section 3. Increase or Decrease of Directors. Subject to the protective provisions of the Series A Preferred Stock set forth in Section 5 of Section (A) of Article IV, the number of directors of the Corporation may be increased or decreased from time to time by amendment to, or in the manner provided in, the bylaws; but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw provision fixing the number of directors of the Corporation, the number shall be seven (7).

Section 4. No Written Ballot Required. Elections of directors need not be by written ballot unless otherwise provided in the bylaws of the Corporation.

#### ARTICLE VIII.

##### Reserved.

#### ARTICLE IX.

##### Bylaws

Subject to the protective provisions of the Preferred Stock set forth in Section 5 of Section (A) of Article IV, the Board of Directors of the Corporation is expressly authorized from time to time to make, alter or repeal any of the bylaws of the Corporation; provided, however, that, subject to the protective provisions of the Preferred Stock set forth in Section 5 of Section (A) of Article IV, the shareholders may change or repeal any bylaw adopted by the Board of Directors by the affirmative vote of the percentage of holders of capital stock specified therein.

#### ARTICLE X.

##### Liability of Directors

Section 1. Limitation of Liability. No person who is or was a director of the Corporation shall be personally liable to the Corporation or any of its shareholders for monetary damages for an act or omission in such person's capacity as a director of the Corporation, except to the extent such exemption from liability or limitation thereof is not permitted by applicable law, as the same exists or hereafter may be changed. If the TBCA, the Texas Miscellaneous Corporation Laws Act or any other applicable law is hereafter changed to authorize corporate action further limiting or eliminating the liability of directors, then the liability of a director to the Corporation or its shareholders shall be limited or eliminated to the fullest extent permitted by applicable law, as so changed. Any repeal or amendment of this Section 1 by the shareholders of the Corporation or by changes in law, or the adoption of any other provision of these Amended and Restated Articles of Incorporation inconsistent with this Section 1 will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to further limit or eliminate the liability of directors) and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or amendment or adoption of such inconsistent

provision with respect to acts or omissions occurring prior to such repeal or amendment or adoption of such inconsistent provision.

Section 2. Indemnification.

(a) Each person who was or is a party or is threatened to be made a party to, or testifies or otherwise participates in, any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative, any appeal in such an action, suit or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding (any of the foregoing hereinafter called a "*proceeding*"), whether or not by or in the right of the Corporation, because such person is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, proprietorship, trust, employee benefit plan, other enterprise or other entity (hereinafter a "*Covered Person*") shall be indemnified by the Corporation to the fullest extent authorized or permitted by applicable law, as the same exists or may hereafter be changed, against all judgments, penalties (including excise and similar taxes), fines, settlements and reasonable expenses (including attorneys' fees and court costs) actually incurred by such person in connection with such proceeding, and such right to indemnification shall continue as to a person who has ceased to be a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall indemnify a Covered Person in connection with a proceeding (or part thereof) initiated by such Covered Person only if such proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred by this Section 2 shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any such proceeding in advance of its final disposition.

(b) The rights conferred on any Covered Person by this Section 2 shall not be exclusive of any other rights which any Covered Person may have or hereafter acquire under law, these Amended and Restated Articles of Incorporation, the bylaws of the Corporation, an agreement, vote of shareholders or disinterested directors, or otherwise.

(c) Any repeal or amendment of this Section 2 by the shareholders of the Corporation or by changes in law, or the adoption of any other provision of these Amended and Restated Articles of Incorporation inconsistent with this Section 2, will, unless otherwise required by law, be prospective only (except to the extent such amendment, change in law or adoption permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

(d) This Section 2 shall not limit the right of the Corporation, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than Covered Persons.



## ARTICLE XI.

### Action Without Shareholder Meetings

Any action required by the TBCA to be taken at any annual meeting or special meeting of shareholders of the Corporation, or any action which may be taken at any annual meeting or special meeting of the shareholders of the Corporation, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares of the Corporation having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares of the Corporation entitled, to vote on the action were present and voted.

[Signature Page to Amended and Restated Articles of Incorporation Follows]

**IN WITNESS WHEREOF**, these Amended and Restated Articles of Incorporation have been signed by Steve Kahan, President and Chief Executive Officer of the Corporation, effective as of June 28, 2006.

**ALERT LOGIC, INC.**

By: /s/ Steve Kahan

Name: Steve Kahan

Title: President Chief Executive Officer