

State of Delaware
Secretary of State
Division of Corporations
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**CERTIFICATE OF INCORPORATION
OF
APPLIANCE COMPUTING INC.**

**ARTICLE 1
NAME**

The name of the Corporation is Appliance Computing Inc.

**ARTICLE 2
REGISTERED OFFICE AND AGENT**

The respective names of the county and of the city within the county in which the registered office of the Corporation is to be located in the State of Delaware are the county of New Castle and the City of Wilmington. The name and address by street and number of said registered agent is The Corporation Trust Company, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

**ARTICLE 3
PURPOSE**

The Corporation is organized for the purposes of transacting any and all lawful business for which a corporation may be incorporated under Section 102 of the Delaware General Corporation Law, as amended.

**ARTICLE 4
CAPITAL STOCK**

Section 1. *Authorized Capital.* The total number of shares which the Corporation is authorized to issue is 77,933,511, consisting of 70,000,000 shares of Common Stock, \$.001 par value per share, and 7,933,511 shares of Preferred Stock, \$.001 par value per share, of which 7,823,419 shares are designated "Series A-1 Preferred Stock" and 110,092 of which shares are designated "Series A-2 Preferred Stock." The Series A-1 Preferred Stock and the Series A-2 Preferred Stock are referred to herein collectively as the "Series A Preferred Stock." The rights, preferences, and other terms of the Preferred Stock are set forth in Article 5. The Common Stock is subject to the rights and preferences of the Preferred Stock as set forth below.

ARTICLE 5

TERMS OF PREFERRED STOCK

The Preferred Stock shall have the rights, privileges and preferences set forth below.

Section 1. *Dividends.* The holders of the Series A-1 Preferred Stock and the holders of the Series A-2 Preferred Stock shall be entitled to receive, out of any funds legally available

therefor, noncumulative dividends at the rate of Two and Sixty-One Hundredths Cents (\$0.0261) per share in the case of the Series A-1 Preferred Stock and Two and Twenty-Two Hundredths Cents (\$0.0222) per share in the case of the Series A-2 Preferred Stock per year (in each case as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like), payable in preference and priority to any payment of any dividend on Common Stock when, as and if declared by the Board of Directors. No right shall accrue to holders of Series A-1 Preferred Stock or holders of Series A-2 Preferred Stock by reason of the fact that dividends on such shares are not declared or paid in any prior year. The holders of the Series A-1 Preferred Stock and holders of Series A-2 Preferred Stock also shall be entitled to participate pro rata in any dividends paid on the Common Stock on an as-if-converted basis.

In the event that the Corporation shall have declared but unpaid dividends outstanding immediately prior to, and in the event of, a conversion of Series A-1 Preferred Stock and Series A-2 Preferred Stock (as provided in Article 5 Section 3 hereof), the Corporation shall, at the option of the Corporation, pay in cash to each holder of Series A-1 Preferred Stock and Series A-2 Preferred Stock subject to conversion the full amount of any such dividends or allow such dividends to be converted into Common Stock in accordance with, and pursuant to the terms specified in, Article 5 Section 3 hereof.

Section 2. *Liquidation Preference.*

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, (i) the holders of Series A-1 Preferred Stock shall be entitled to receive for each outstanding share of Series A-1 Preferred Stock then held by them an amount equal to Thirty-Two and Fifty-Eight Hundredths Cents (\$0.3258) plus declared but unpaid dividends on such share (in each case, as appropriately adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) (the "*Series A-1 Liquidation Preference*") and (ii) the holders of Series A-2 Preferred Stock shall be entitled to receive for each outstanding share of Series A-2 Preferred Stock then held by them an amount equal to Twenty-Seven and Sixty-Nine Hundredths Cents (\$0.2769) plus declared but unpaid dividends on such share (in each case, as appropriately adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) (the "*Series A-2 Liquidation Preference*"). If, upon the occurrence of a liquidation, dissolution or winding up, the assets and funds of the Corporation legally available for distribution to stockholders by reason of their ownership of stock of the Corporation shall be insufficient to permit the payment to such holders of the Series A-1 Preferred Stock and holders of the Series A-2 Preferred Stock of the full aforementioned preferential amounts, then the entire assets and funds of the Corporation legally available for distribution to stockholders by reason of their ownership of stock of the Corporation shall be distributed ratably among the holders of the Series A-1 Preferred Stock and the holders of the Series A-2 Preferred Stock in proportion to the aggregate preferential amount each such holder is otherwise entitled to receive.

(b) After payment has been made to the holders of the Series A-1 Preferred Stock and the Series A-2 Preferred Stock of the full amounts to which they shall be

entitled as provided in subsection (a) above, all remaining assets of the Corporation shall be distributed among all holders of the Series A-1 Preferred Stock, the holders of the Series A-2 Preferred Stock and all holders of Common Stock pro rata based on the number of shares of Common Stock outstanding and the number of shares of Common Stock which would be held by each holder of Series A-1 Preferred Stock and each holder of the Series A-2 Preferred Stock if all shares of the Series A-1 Preferred Stock and Series A-2 Preferred Stock were converted into Common Stock at the then effective Conversion Price (as set forth in Article 5 Section 3(a) below).

(c) For purposes of this Article 5 Section 2, unless otherwise agreed to by the holders of at least a majority of the Series A-1 Preferred Stock and the Series A-2 Preferred Stock (voting together as a single class), a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, and to include, the Corporation's sale of all or substantially all of its assets or the acquisition of the Corporation by another entity by means of merger or consolidation resulting in the exchange of the outstanding shares of the Corporation for securities or consideration issued, or caused to be issued, by the acquiring corporation in which the holders of the capital stock of the Corporation then hold less than Fifty Percent (50%) of the voting securities of the surviving corporation.

(d) Notwithstanding this Article 5 Section 2, each holder of Preferred Stock shall have the right to elect the benefits of the provisions of Article 5 Section 3(a) below or other applicable conversion provisions in lieu of receiving payment on any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, pursuant to this Article 5 Section 2.

(e) In any of such events, if the consideration received by the Corporation or its stockholders is other than cash or securities, its value will be deemed its fair market value, as determined in good faith by the Board of Directors. Any securities shall be valued as follows:

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

(1) If traded on a securities exchange or through Nasdaq, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the thirty (30) day period ending three (3) days prior to the closing of the transaction in subsection 2(c) above;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing of the transaction in subsection 2(c) above; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate

discount from the market value determined as above in subsection (i)(1), (2) or (3) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

Section 3. *Conversion.* The holders of Preferred Stock shall have conversion rights as follows (the "*Conversion Rights*"):

(a) *Right to Convert.* Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price of such shares of Preferred Stock by the applicable Conversion Price at the time in effect for shares of such series of Preferred Stock. The Original Issue Price per share of Series A-1 Preferred Stock is Thirty-Two and Fifty-Eight Hundredths Cents (\$0.3258) (as appropriately adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like). The Original Issue Price per share of Series A-2 Preferred Stock is Twenty-Seven and Sixty-Nine Hundredths (\$0.2769) (as appropriately adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like). The initial Conversion Price per share of Series A-1 Preferred Stock shall be Thirty-Two and Fifty-Eight Hundredths Cents (\$0.3258), and the initial Conversion Price per share of the Series A-2 Preferred Stock shall be Twenty-Seven and Sixty-Nine Hundredths (\$0.2769), in each case subject to adjustment from time to time as provided below.

(b) *Automatic Conversion.* Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Price for each series of Preferred Stock immediately upon the earlier of (i) the effectiveness of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "*Securities Act*"), covering the offer and sale of Common Stock with an aggregate offering price of not less than Fifteen Million Dollars (\$15,000,000), or (ii) the date specified pursuant to an election to convert all Series A-1 Preferred Stock and Series A-2 Preferred Stock into Common Stock by holders of at least a majority of the then outstanding shares of Series A-1 Preferred Stock and Series A-2 Preferred Stock (voting together as a single class), at a duly held meeting or by written consent or other agreement.

(c) *Mechanics of Conversion.* No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional share to which a holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of the Common Stock as determined by the Board of Directors. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, the holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that the holder elects to convert the same. Such notice shall also state whether the holder elects, pursuant to Article 5 Section 1 hereof, to receive declared but unpaid dividends on the Preferred Stock proposed to be converted in cash, or to convert such dividends into shares of Common Stock at their fair market value as determined by the Board of Directors. The Corporation shall, as soon as

practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into a fractional share of Common Stock, and any declared but unpaid dividends on the converted Preferred Stock which the holder elected to receive in cash. 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 on such date; provided, however, that in the event of an automatic conversion pursuant to Article 5 Section 3(b) above, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such Preferred Stock and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; and provided, further, that the Corporation shall not be obligated to issue certificates evincing the shares of Common Stock issuable upon such automatic conversion unless the certificates evincing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided above, or such holder of Preferred Stock notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder of Preferred Stock shall be entitled and a check payable to such holder of Preferred Stock in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock and any declared but unpaid dividends on the converted Preferred Stock which the holder elected to receive in cash.

If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act in accordance with Article 5 Section 3(b)(i) above, the conversion may, at the option of any holder tendering shares of Preferred Stock for conversion, 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 Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

If the conversion is in connection with a liquidation, dissolution or winding up of the Corporation described in Article 5 Section 2 above, the conversion may, at the option of any holder tendering shares of Preferred Stock for conversion, be conditioned upon the consummation of the Liquidation Event, in which event the person(s) entitled to receive the Common Stock upon conversion of Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the consummation of the liquidation, dissolution or winding up.

(d) *Adjustments to Conversion Price for Diluting Issues.*

(i) Special Definitions. For purposes of this Article 5 Section 3, the following definitions shall apply:

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

(2) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock) or other securities convertible into or exchangeable directly or indirectly for Common Stock.

(3) "Filing Date" shall mean the date on which this Certificate of Incorporation is filed with the Secretary of State of the State of Delaware.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Article 5 Section 3(d)(iii), deemed to be issued) by the Corporation after the Filing Date, other than:

(i) Shares of Series A-1 Preferred Stock or Series A-2 Preferred Stock and the shares of Common Stock issued upon the conversion of Series A-1 Preferred Stock and Series A-2 Preferred Stock;

(ii) up to 4,115,000 shares of Common Stock, or options or other rights to purchase Common Stock (including those issued prior to the Filing Date), issued or granted to employees, officers, directors and consultants of the Corporation pursuant to any one or more employee stock plans or agreements approved by the Corporation's Board of Directors;

(iii) securities issued or issuable to financial institutions or lessors in connection with real estate leases, commercial credit arrangements, equipment financings or similar transactions approved by the Board of Directors, including, but not limited to, equipment leases or bank lines of credit;

(iv) securities issued as a dividend or distribution on, or in connection with a split of or recapitalization of, any of the capital stock of the Corporation;

(v) securities issued by the Corporation pursuant to a strategic partnership, joint venture or other similar arrangement unanimously approved by the Board of Directors where the primary purpose of the arrangement is not to raise capital;

(vi) securities issued pursuant to a registration statement filed by the Corporation under the Securities Act pursuant to which all outstanding shares of Preferred Stock are converted to Common Stock;

(vii) securities issued by the Corporation pursuant to the acquisition of another corporation or other entity by the Corporation by merger, purchase of all

or substantially all of the capital stock or assets, or other reorganization approved by the Board of Directors, including the directors elected by the holders of Preferred Stock; and

(viii) securities issued or issuable upon exercise of Options or Convertible Securities outstanding on the Filing Date.

(ix) Shares of Common Stock issued upon conversion or exercise of Options or Convertible Securities already deemed to be issued pursuant to Article 5 Section 3(d)(iii); or

(x) pursuant to a vote of a majority of the Series A Preferred Stock that such shares shall not be deemed "Additional Securities."

(ii) No Adjustment of Conversion Price. No adjustment in the applicable Conversion Price of a particular share of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price for each series of Preferred Stock in effect on the date of, and immediately prior to such issue, for such share of Preferred Stock.

(iii) Deemed Issue of Additional Shares of Common Stock.

(1) Options and Convertible Securities. Except as provided in Article 5 Section 3(d)(i)(4) above, in the event the Corporation at any time or from time to time after the Filing Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities 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 for a subsequent adjustment of such number) 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 issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Article 5 Section 3(d)(v) hereof) of such Additional Shares of Common Stock would be less than the Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustment in the 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 (or decrease) in the consideration payable to the Corporation, or decrease (or increase) in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion

Price computed upon the original issue 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;

(C) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(i) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities, and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

(ii) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(D) no readjustment pursuant to clause (B) or (C) above shall have the effect of increasing the Conversion Price for any series of Preferred Stock to an amount which exceeds the lower of (i) the Conversion Price for that series on the original adjustment date, or (ii) the Conversion Price for that series that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(2) Stock Dividends. In the event the Corporation, at any time or from time to time after the date of filing hereof, shall declare or pay any dividend on the Common Stock payable in Common Stock, then Additional Shares of Common Stock shall be deemed to have been issued immediately after the close of business on the record date for the determination of holders of any class of securities entitled to receive such dividend.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Article 5 Section 3(d)(iii)) without consideration or for a consideration per share less than the

Conversion Price with respect to any series of Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, such 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 such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue 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 such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Article 5 Section 3(d)(iv), all shares of Common Stock issuable upon conversion of all outstanding Preferred Stock and all outstanding Convertible Securities, and upon exercise of all outstanding Options bearing an exercise price which is lower than the price at which the Additional Shares of Common Stock were issued (or deemed to be issued), shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued pursuant to subsection (iii), such Additional Shares of Common Stock shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this Article 5 Section 3(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property: Such consideration shall:

(A) 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;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issuance, as determined by the Board of Directors in the good faith exercise of its reasonable business judgment; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors.

(2) 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 Article 5 Section 3(d)(iii)(1), relating to Options and Convertible Securities, shall be determined by dividing

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue 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 for a subsequent

adjustment of such consideration) 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

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(3) Stock Dividends. Any Additional Shares of Common Stock deemed to have been issued relating to stock dividends shall be deemed to have been issued for no consideration.

(vi) Adjustments to Conversion Price for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that the Corporation at any time or from time to time on or after the Filing Date (a) shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or (b) shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or (c) in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Conversion Price for any series of Preferred Stock in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that the Corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration, then the Corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

(vii) Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Article 5 Section 3(d)(vi) above or a merger or other reorganization referred to in Article 5 Section 2 above), the Conversion Prices then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the various series of Preferred Stock shall be convertible into a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Preferred Stock immediately before that change.

(viii) Reorganizations, Mergers, Consolidations or Sales of Assets. If at any time or from time to time on or after the Filing Date, there is a Capital Reorganization (other than a liquidation, dissolution or winding up of the Corporation as defined in Article 5

Section 2 or as a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Article Section 3), provision shall be made as a part of such Capital Reorganization to the effect that the holders of the various series of 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 to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such Capital Reorganization, 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 Article 5 Section 3 with respect to the rights of the holders of Preferred Stock after the Capital Reorganization to the end that the provisions of this Article 5 Section 3 (including adjustment of the Conversion Prices 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.

(1) For purposes of this Article 5 Section 3(d)(viii), a "Capital Reorganization" shall mean a consolidation or merger of the Corporation with or into another person (other than a consolidation or merger in which the Corporation is the continuing entity and which does not result in any change in the Common Stock) or a capital reorganization of the Common Stock (other than as a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Article 5 Section 3).

(2) Notwithstanding the foregoing, in the event of any Capital Reorganization that constitutes a liquidation, dissolution or winding up of the Corporation (as defined in Article 5 Section 2 above), the holders of a majority of all outstanding Preferred Stock shall be entitled to elect, by providing written notice of such election to the Corporation within twenty (20) days of receiving notice of such Capital Reorganization, to treat such transaction as a Capital Reorganization and not as a liquidation, dissolution or winding up of the Corporation, in which event the provisions of this Article 5 Section 3(d)(viii) shall apply. Such election shall apply to all outstanding Preferred Stock. In the absence of such an election, a Capital Reorganization that constitutes a liquidation, dissolution or winding up of the Corporation shall be treated as a liquidation, dissolution or winding up of the Corporation and not as a Capital Reorganization.

(ix) Adjustments for Other Distributions. In the event the Corporation at any time or from time to time makes or fixes a record date for the determination of holders of Common Stock entitled to receive any distribution payable in securities of the Corporation other than shares of Common Stock and other than as otherwise adjusted in this Article 5 Section 3, then and in each such event provision shall be made so that the holders of Preferred Stock shall receive upon such distribution the amount of securities of the Corporation which they would have received had their Preferred Stock converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Article 5 Section 3 with respect to the rights of the holders of the Preferred Stock.

(e) *No Impairment.* The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, 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 to be observed or performed hereunder by the Corporation.

(f) *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Article 5 Section 3, the Corporation shall promptly compute such adjustment or readjustment in accordance with the terms hereof. 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 (i) the particulars of any adjustment to the Conversion Price since issuance of the Preferred Stock, (ii) the Conversion Price for such series of Preferred Stock currently in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

(g) *Notices of Record Date.* In the event that the Corporation shall propose at any time:

(i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Common Stock shares outstanding involving a change in the Common Stock shares; or

(iii) to merge with or into any other corporation, or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up;

then, in connection with each such event, the Corporation shall send to the holders of the Preferred Stock:

(1) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend or distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto) in respect of the matters referred to in (i) above or for determining rights to vote in respect of the matters referred to in (ii) and (iii) above; and

(2) in the case of the matters referred to in (iii), above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

Each such written notice shall be delivered personally, given by facsimile or given by first class mail, postage prepaid, addressed to the holders of Preferred Stock shares at the address for each such holder as shown on the books of the Corporation.

Section 4. *Voting Rights and Directors.*

(a) *Vote Other than for Directors.* Except as otherwise required by law and as provided in the next sentence and in subsection (b) below with respect to the election of directors and in Article 5 Section 5 below with respect to the Protective Provisions, the holders of Preferred Stock and the holders of Common Stock shall be entitled to notice of any stockholders' meeting and will vote together and not as separate classes upon any matter submitted to the stockholders for a vote, as follows: (i) each holder of Preferred Stock shall have one vote for each full share of Common Stock into which such holder's shares of Preferred Stock would be convertible on the record date for the vote, and (ii) the holders of Common Stock shall have one vote per share of Common Stock. Notwithstanding the provisions of Section 242(b)(2) of the Delaware General Corporation Law, the number of authorized shares of Common Stock may be increased or decreased by the affirmative vote of the holders of a majority of Preferred Stock and Common Stock, voting together as one class and each holder of Preferred Stock having that number of votes per share as is equal to the number of shares of Common Stock into which each such share of Preferred Stock held by such holder could be converted pursuant to Article 5 Section 3 on the date for determination of stockholders entitled to vote on such increase or decrease.

(b) *Number of Directors and Voting for Directors.* The authorized number of directors of the Corporation shall be five (5). For so long as at least one million (1,000,000) shares of the Series A Preferred Stock remain outstanding (appropriately adjusted for stock splits, combinations, recapitalizations and the like), the holders of shares of Series A Preferred Stock, voting as a separate class, shall be entitled to elect two (2) directors, the holders of the Common Stock voting as a class shall be entitled to elect two (2) directors and the remaining director shall be elected by the holders of the Common Stock and Preferred Stock, voting together as a single class. Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

(c) *Vacancies; Removal.* Any vacancy in the Board of Directors occurring because of the death, resignation or removal of a director elected in accordance with Article 5 Section 4(b) above shall be filled by the vote or written consent of the holders of a majority of the voting group which elected such director or, in the absence of action by such holders, by unanimous action of the remaining director or directors elected by the holders of such class. A director may be removed from the Board of Directors with or without cause by the vote or consent of the voting group entitled to elect such director in accordance with the General Corporation Law of the State of Delaware.

Section 5. *Protective Provisions.* In addition to any other rights provided by law, so long as at least one million (1,000,000) shares of the Series A Preferred Stock shall be outstanding (appropriately adjusted for stock splits, combinations, recapitalizations and the like), the Corporation shall not (whether by merger, consolidation or otherwise), without first obtaining the affirmative vote or written consent of the holders of not less than sixty percent (60%) of such outstanding shares of Series A Preferred Stock:

(a) increase the number of authorized shares of any series of Preferred Stock or Common Stock;

(b) authorize or issue additional Preferred Stock senior to or pari passu with the Series A Preferred Stock;

(c) amend or waive any provision of the Certificate of Incorporation or Bylaws of the Corporation;

(d) approve any merger, reorganization, consolidation, sale or disposition of all or substantially all of the properties or assets of the Corporation that would be treated as a liquidation under Section 2;

(e) approve the purchase, redemption or other acquisition of any securities of the Corporation, other than repurchases pursuant to stock restriction agreements approved by the Board of Directors that grant to the Corporation a right of repurchase upon termination of the service or employment of a consultant, director or employee or pursuant to the Corporation's exercise of rights of first refusal over such shares;

(f) increase or decrease the authorized number of directors of the Corporation;

(g) declare or pay any dividends to any holders of any class or series of capital stock;

(h) unless unanimously approved by the Board and the requisite holders of Series A Preferred Stock: (i) mortgage or pledge, or create a security interest in, permit any subsidiary to mortgage, pledge or create a security interest in, all or substantially all of the property of the Corporation or such subsidiary Corporation, (ii) own, or permit any subsidiary Corporation to own, any stock or other securities of any subsidiary Corporation or other corporation, partnership or entity unless it is wholly owned by the Corporation; (iii) make any loans or advances to employees, except in the ordinary course of business as part of travel advances or salary and except for the purchase by the Corporation of promissory notes from its employees in connection with such employees' purchase of the Corporation's securities; or (iv) make guarantees except in the ordinary course of business;

(i) approve the liquidation or dissolution of the Corporation; or

(j) approve the filing of a petition under any bankruptcy or insolvency law.

Section 6. *Status of Converted Stock.* In the event any shares of Preferred Stock shall be converted pursuant to Article 5 Section 3 hereof, the shares so converted shall automatically be canceled and shall not be issuable by the Corporation, and the Certificate of Incorporation shall be deemed to be amended to effect the corresponding reduction in the Corporation's authorized Preferred Stock.

Section 7. *No Reissuance of Series A Preferred.* No share or shares of Preferred Stock acquired by the Corporation by reason of purchase, conversion or otherwise may be

reissued, and all such shares shall be canceled, retired and eliminated from the shares of Preferred Stock that the Corporation is authorized to issue.

Section 8. *Residual Rights.* All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the Common Stock.

ARTICLE 6 DURATION

The Corporation shall have perpetual existence.

ARTICLE 7 BYLAWS

Except as otherwise provided in this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

ARTICLE 8 DIRECTORS

The number of directors of this corporation shall be fixed from time to time by the bylaws or by amendment thereof duly adopted by the Board of Directors or by the stockholders. The first Board of Directors shall consist of five (5) members, of which two (2) of the seats shall be filled initially and three (3) of the seats shall remain vacant. The names and addresses of the two (2) initial directors are as follows:

<u>NAME</u>	<u>ADDRESS</u>
David Eraker	216 1st Ave. South, Suite 420 Seattle, WA 98104-2534
Michael Dougherty	216 1st Ave. South, Suite 420 Seattle, WA 98104-2534

The initial directors shall serve until the first annual meeting of the stockholders and until their successors are elected and qualified.

ARTICLE 9 MEETINGS OF STOCKHOLDERS

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE 10

LIMITATION OF DIRECTOR LIABILITY AND INDEMNIFICATION

Section 1. *Limitation of Liability.* A director of the Corporation shall, to the fullest extent permitted by the General Corporation Law as it now exists or as it may hereafter be amended, not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is amended, after approval by the stockholders of this Article, to authorize corporation action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

Section 2. *Indemnification.* To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders, and others.

Section 3. *Amendment.* Any amendment, repeal or modification of this Article 9, or the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article 9 by the stockholders of the Corporation shall not apply to or adversely affect any right or protection or increase the liability of a director of the Corporation existing at the time of such amendment, repeal, modification or adoption.

ARTICLE 11

AMENDMENT TO CERTIFICATE OF INCORPORATION

Subject to Article 5, Section 5 hereof, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE 12

POWERS OF INCORPORATOR

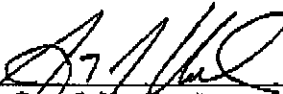
The powers of the incorporator shall terminate upon the filing of the Certificate of Incorporation.

**SIGNATURE PAGE
CERTIFICATE OF INCORPORATION**

APPLIANCE COMPUTING INC.

The undersigned, for the purposes of forming a corporation under the laws of the state of Delaware, hereby executes this Certificate of Incorporation on February 21, 2005.

By



Gary J. Kocher, Incorporator

Preston Gates & Ellis LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158