

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	CHANGE OF NAME		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Sterling Testing Systems, Inc.		04/17/2006	CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	Sterling Infosystems, Inc.		
Street Address:	249 West 17th Street		
City:	New York		
State/Country:	NEW YORK		
Postal Code:	10011		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 3			
Property Type	Number	Word Mark	
Serial Number:	78865481	STERLING INFOSYSTEMS	
Registration Number:	2837606	"HOW WELL DO YOU KNOW THE PERSON YOU ARE ABOUT TO HIRE?"	
Registration Number:	2894405	STERLING TESTING SYSTEMS	
CORRESPONDENCE DATA			
Fax Number:	(412)355-2609		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	(412) 355-2623		
Email:	tperles@kwbhlaw.com		
Correspondent Name:	Andrew J. Cornelius		
Address Line 1:	1001 Liberty Avenue		
Address Line 2:	11th Floor, Federated Investors Tower		
Address Line 4:	Pittsburgh, PENNSYLVANIA 15222		
NAME OF SUBMITTER:	Andrew J. Cornelius		
Signature:	/Andrew Cornelius/		

CH \$90.00 78865481

Date:

10/09/2008

Total Attachments: 18

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**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
STERLING TESTING SYSTEMS, INC.**

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware.)

Sterling Testing Systems, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law") (the "Company") by and through its Chairman and Chief Executive Officer, Bill Greenblatt, does hereby certify that:

FIRST: The original Certificate of Incorporation of the Company was filed with the Secretary of State of the State of Delaware on April 14, 2003 under the name Sterling Testing Systems, Inc. (the "*Original Certificate of Incorporation*"). The Original Certificate of Incorporation was amended and restated by the Amended and Restated Certificate of Incorporation of the Company filed with the Secretary of State of the State of Delaware on April 30, 2003 (the "*Amended and Restated Certificate of Incorporation*").

SECOND: This Second Amended and Restated Certificate of Incorporation amends and restates the Amended and Restated Certificate of Incorporation by deleting from the Amended and Restated Certificate of Incorporation all of the provisions thereof and substituting in lieu of such provisions the text of the Second Amended and Restated Certificate of Incorporation set forth in Article FIFTH hereof.

THIRD: Pursuant to Sections 141, 242 and 245 of the General Corporation Law and the Amended and Restated Certificate of Incorporation, the Board of Directors of the Company has deemed it advisable and in the best interests of the Company to amend and restate in its entirety the Amended and Restated Certificate of Incorporation as set forth therein, and has directed that this Second Amended and Restated Certificate of Incorporation be submitted for consideration and action thereon by the stockholders of the Company.

FOURTH: The text of the Second Amended and Restated Certificate of Incorporation set forth in Article V hereof was duly adopted by the Board of Directors of the Company and by the holders of a majority of the outstanding shares of capital stock of the Company entitled to vote thereon in accordance with the provisions of Sections 141, 228, 242 and 245 of the General Corporation Law and the Amended and Restated Certificate of Incorporation.

FIFTH: The text of the Amended and Restated Certificate of Incorporation, as amended, is hereby amended and restated by this Second Amended and Restated Certificate of Incorporation, to read in full as follows:

ARTICLE I

The name of this corporation is Sterling Infosystems, Inc.

ARTICLE II

The address of the Company's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street in the City of Wilmington, County of New Castle. The name of the corporation's registered agent at such address is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

ARTICLE III

The nature of the business and of the purposes to be conducted and promoted by the Corporation are to conduct any lawful business, to promote any lawful purpose, and to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE IV

A. **Authorized and Issuable Shares.** The Company may issue two (2) classes of shares to be designated, respectively, Preferred Stock ("**Preferred Stock**") and Common Stock ("**Common Stock**"). The total number of shares of capital stock that the Company has authorized and may issue is 21,000,000. The total number of shares of Preferred Stock that the Company has authorized and may issue is 4,700,000. The total number of shares of Common Stock the Company has authorized and may issue is 16,300,000. The Preferred Stock and the Common Stock shall have a par value of \$0.001 per share.

B. **Series of Preferred Stock.** The Preferred Stock authorized by this Amended and Restated Certificate of Incorporation may be issued from time to time in series. There is hereby established a series of the Corporation's Preferred Stock which shall be designated Series A Preferred Stock (the "**Series A Preferred Stock**"). The powers, preferences, rights, and the qualifications, limitations and restrictions granted to and imposed on the Series A Preferred Stock, which series shall consist of 4,625,000 shares, are as set forth below in Division (C) of this Article IV. The Board of Directors is hereby authorized to fix or alter the powers, preferences and rights, and the qualifications, limitations and restrictions granted to or imposed upon additional series of Preferred Stock, including any conversion rights associated therewith, and the number of shares constituting any such series and the designation thereof, or of any of them. Subject to compliance with applicable protective voting rights which have been or may be granted to the Preferred Stock or series thereof in Certificates of Designations or the corporation's Certificate of Incorporation as amended from time to time ("**Protective Provisions**"), but notwithstanding any other rights of the Preferred Stock or any series thereof, the powers, preferences, and rights, and the qualifications, limitations and restrictions of any such additional series may be subordinated to, pari passu with (including, without limitation, inclusion in provisions with respect to liquidation and acquisition preferences, redemption and/or approval of matters by vote or written consent), or senior to any of those of any present or future class or series of Preferred or Common Stock. Subject to compliance with applicable Protective Provisions, the Board of Directors is also authorized to increase or decrease the number of shares of any series (other than the Series A Preferred Stock), prior or subsequent to the issue of any shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

C. Effective as of the date and time this Second Amended and Restated Certificate of Incorporation is filed with the Secretary of State of the State of Delaware, every one share of the Company's Common Stock outstanding shall be split into five hundred (500) shares of Common Stock described herein and every one share of the Company's Series A Preferred Stock

outstanding shall be split into five hundred (500) shares of Series A Preferred Stock described herein (the "**Stock Split**"). Notwithstanding the foregoing, the par value of each share of the Common Stock and Preferred Stock shall not be adjusted in connection with the Stock Split. All share amounts, amounts per share and per share numbers set forth in this Second Amended and Restated Certificate of Incorporation have been appropriately adjusted to reflect the Stock Split and no further adjustments shall be made as a result of the Stock Split, including any further adjustment to the Series A Preferred Stock conversion price in effect immediately after the filing of this Second Amended and Restated Certificate of Incorporation. No fractional shares of Common Stock or Series A Preferred Stock shall be issued upon the Stock Split. All shares of Common Stock or Series A Preferred Stock, as applicable, otherwise issuable to a holder shall be aggregated with all other shares of Common Stock or Series A Preferred Stock, as applicable, for purposes of determining whether the Stock Split would result in the issuance of any fractional share. If, after the aforementioned aggregation, the Stock Split would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the fair market value of one (1) share of Common Stock or Series A Preferred Stock, as applicable (as determined by the Board of Directors of the Company), on the date of the Stock Split.

D. Rights of Series A Preferred Stock. The powers, preferences and rights and the qualifications, limitations and restrictions granted to and imposed on the Series A Preferred Stock are as follows:

1. **Dividends.**

(a) The holders of Series A Preferred Stock shall be entitled to receive dividends, out of funds legally available for that purpose, when and if declared by the Board of Directors. Such dividends may be paid in cash, property or shares of the Company. Each such dividend shall be paid to the holders of record of Series A Preferred Stock as their names appear on the share register of the Company on the record date designated by the Board of Directors.

(b) No dividends shall be declared or paid on any share of Common Stock or Series A Preferred Stock unless a dividend is declared or paid with respect to all outstanding shares of Series A Preferred Stock in an amount equal to the aggregate amount of such dividends for all shares of Common Stock into which each such share of Series A Preferred Stock could then be converted.

(c) If the Company declares a distribution (other than any distribution described in Division D, Section 2 of the Article IV, or in redemption of Series A Preferred Stock) payable in securities of other persons, evidences of indebtedness issued by the Company of other persons, assets (excluding cash dividends) or options or rights to purchase any such securities or evidences of indebtedness, then, in each such case the holders of the Series A Preferred Stock shall be entitled to proportionate share of any such distribution as though the holders of the Series A Preferred Stock were the holders of the number of shares of Common Stock of the Company into which their respective shares of Series A Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Company entitled to receive such distribution.

2. **Liquidation Preference.**

(a) if the Company voluntarily or involuntarily liquidates, dissolves or otherwise winds up its affairs, the holders of the Series A Preferred Stock shall be entitled to be paid, prior and in preference to any distribution of any of the assets or surplus funds of the

Company to the holders of any other series of Preferred Stock, if any, or Common Stock by reason of their ownership thereof, the greater of (i) \$2.00 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), respectively, for each outstanding share of Series A Preferred Stock as of the date of such liquidation or dissolution or such other winding up, plus any declared but unpaid dividends thereon to such date, or (ii) an amount equal to the amount that the number of shares of Common Stock issuable upon conversion of such share would receive assuming such conversion immediately prior to such liquidation or dissolution or such other winding up. Such payment shall be made in cash or in property taken at its fair value as determined by the Board of Directors, or both, at the election of the Board of Directors. If, upon such liquidation, dissolution or winding up, the assets and funds thus distributed among the holders of Series A Preferred Stock are insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Company legally available for the distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) If the payment in Section 2(a) is made in full to the holders of Series A Preferred Stock, then the Company's entire remaining assets and funds shall be distributed among the holders of Common Stock, in proportion to the shares of Common Stock then held by them.

(c) For purposes of this Section 2, a liquidation, dissolution or winding up of the Company shall be deemed to include: (i) the acquisition of the Company by the means of any transaction or series of related transactions (including but not limited to, any reorganization, merger or consolidation, but excluding any reincorporation transaction or transaction effected exclusively for the purpose of changing the domicile of the Company), or (ii) a sale of all or substantially all of the assets of the Company; unless the Company's stockholders of record immediately prior to such an acquisition or sale will, immediately thereafter (by virtue of securities issued as consideration for the Company's acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity. In any such deemed liquidation, dissolution or winding up, holders of the Series A Preferred Stock may elect by majority vote to receive their liquidation preference in the same consideration as holders of Common Stock.

(d) Subject to the last sentence of Section 2(c), whenever the distribution provided for in this Section 2 is payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined in good faith by the Board of Directors.

(e) In any of such events described in Section 2(c), if the consideration received by the Company is other than cash, its value will be deemed its fair market value. 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:

(A) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 30 day period ending three days prior to the closing;

(B) 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 30 day period ending three days prior to the closing; and

(C) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Company and the holders of at least a majority of the voting power of all then outstanding shares of Series A Preferred Stock.

(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 (e)(i)(A), (B), or (C) to reflect the appropriate fair market value thereof, as mutually determined by the Company and the holders of at least a majority of the voting power of all then outstanding shares of such Series A Preferred Stock.

(f) The Company shall give each holder of record of Series A Preferred Stock written notice of an impending transaction described in Section 2(c) not later than 20 days prior to the stockholders' meeting called to approve such transaction, or 20 days prior to closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Company shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than 20 days after the Company has given the first notice provided for herein or sooner than 10 days after the Company 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 Series A Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Series A Preferred Stock.

3. **Conversion Rights.** The Series A Preferred Stock shall be convertible into as follows:

(a) **Optional Conversion.** Subject to and upon compliance with the provisions of this Section 3, the holder of any shares of Series A Preferred Stock shall have the right, at its option, at any time or from time to time, to convert its shares of Series A Preferred Stock into fully paid and nonassessable shares of Common Stock at the "Conversion Price" applicable to the Series A Preferred Stock held by such holder (as defined in Section 3(d)) upon the terms set forth herein.

(b) **Automatic Conversion.** Each outstanding share of Series A Preferred Stock shall automatically be converted, without any further act of the Company or its stockholders, into fully paid and nonassessable shares of Common Stock at the Conversion Price then in effect in the event of:

(i) immediately prior to the closing of an underwritten public offering of shares of the Company, pursuant to a registration statement on Form S-1 under the Securities Act of 1933, as amended, at an offering price (prior to underwriting commissions, discounts and expenses) of not less than \$5.40542 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) and the aggregate proceeds to the Company of which exceed \$20,000,000 (a "Qualified Public Offering");

(ii) the election by holders of a majority of the outstanding shares of Series A Preferred Stock, voting together as a single class on an as-converted basis.

(c) **Conversion Price.**

(i) Each share of Series A Preferred Stock shall be converted into a number of shares of Common Stock determined by dividing (i) the sum of (A) \$2.00 for each share of Series A Preferred Stock plus (B) any declared and unpaid dividends on such shares of Series A Preferred Stock by (ii) the Conversion Price in effect on the Conversion Date. The Conversion Price at which shares of Common Stock shall initially be issuable upon conversion of the shares of Series A Preferred Stock shall be \$ 2.00. The Conversion Price shall be subject to adjustment as set forth in Section 3(f) below.

(d) Mechanics of Conversion.

(i) The holder of any shares of Series A Preferred Stock must exercise the conversion right specified in Section 3(a) by surrendering to the Company at its principal office or to any transfer agent of the Company the certificate or certificates for the shares to be converted, accompanied by written notice specifying the number of shares to be converted and the name or names in which it desires the certificate or certificates of shares of Common Stock to be issued. If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder rendering shares of Series A Preferred Stock for conversion, be conditioned upon the consummation 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 such Series A Preferred Stock until immediately prior to the consummation of such sale of securities.

(ii) Upon the occurrence of an event specified in Section 3(b), the outstanding shares of Series A Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; provided, however, that the Company shall not be obligated to issue to any such holder certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing the shares of Series A Preferred Stock are either delivered to the Company at its principal office or to any transfer agent of the Company.

(iii) Conversion shall be deemed to have been effected on the date when delivery of the notice of an election to convert and certificates for shares is made or on the date of the occurrence of an event specified in Section 3(b), as the case may be. Such date is referred to herein as the "Conversion Date".

(iv) Subject to the provisions of Section 3(f)(vii), as promptly as practicable after the Conversion Date (and after surrender of the certificate or certificates representing shares of Series A Preferred Stock to the Company or any transfer agent of the Company in the case of conversions pursuant to Section 3(b), the Company shall issue and deliver upon the written order of such holder (A) a certificate or certificates for the number of full shares of Common Stock to which such holder is entitled, and (B) a check or cash with respect to any fractional interest in a share of Common Stock as provided in Section 3(e).

(v) Subject to the provisions of Section 3(f)(vii), the person in whose name the certificate or certificates for Common Stock are to be issued shall be deemed to have become a holder of record of such Common Stock on the applicable Conversion Date.

(vi) Upon conversion of only a portion of the number of shares covered by a certificate representing shares of Series A Preferred Stock surrendered for conversion (in the case of conversion pursuant to Section 3(a) the Company shall issue and deliver to or upon the written order of the holder of the certificate so surrendered for conversion,

at the expense of the Company, a new certificate covering the number of shares of Series A Preferred Stock representing the unconverted portion of the certificate so surrendered.

(e) **Fractional Shares.** No fractional shares of Common Stock or scrip shall be issued upon conversion of shares of Series A Preferred Stock. If more than one (1) share of Series A Preferred Stock is surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series A Preferred Stock so surrendered. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of any shares of Series A Preferred Stock, the Company shall pay a cash adjustment in respect of such fractional interest in an amount equal to that fractional interest of the then Current Market Price (as defined in Section 3(g)).

(f) **Conversion Price Adjustments.** The Conversion Price shall be subject to adjustment from time to time as follows:

(i) **Common Stock Issued at Less Than the Conversion Price.** If the Company issues any Common Stock, including securities described in Section 3(f)(1)(C), other than "Excluded Stock" (as defined in Section 3(f)(ii) after the date on which any shares of Series A Preferred Stock were first issued (the "Purchase Date") and without consideration or for consideration per share less than the Conversion Price of the Series A Preferred Stock in effect immediately prior to such issuance (a "Dilutive Issuance"), then the Conversion Price of the , as the case may be, in effect immediately prior to each such issuance shall immediately (except as provided below) be reduced to the price determined by dividing (1) an amount equal to the sum of (A) the number of shares of Common Stock outstanding immediately prior to such issuance multiplied by the Conversion Price for the being adjusted in effect immediately prior to such issuance and (B) the consideration, if any, received by the Company upon such issuance, by (2) the total number of shares of Common Stock outstanding immediately after such issuance

For the purposes of any adjustment of the Conversion Price of the pursuant to Section 3(f)(I), the following provisions shall be applicable.

(A) **Cash.** In the case of the issuance of Common Stock for cash, the amount of the consideration received by the Company shall be deemed to be the amount of the cash proceeds received by the Company for such Common Stock before deducting therefrom any discounts, commissions, taxes or other expenses allowed, paid or incurred by the Company for any underwriting or otherwise in connection with the issuance and sale thereof..

(B) **Consideration Other Than Cash.** In the case of the issuance of Common Stock (otherwise than upon the conversion of shares of capital stock or other securities of the Company) for a consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors, irrespective of any accounting treatment; provided, however, that such fair value as determined by the Board of Directors shall not exceed the aggregate Current Market Price (as hereinafter defined in Section 3(g)) of the shares of Commons Stock being issued as of the date the Board of Directors authorizes the issuance of such shares.

(C) **Options and Convertible Securities.** In the case of the issuance of, or if the Company shall fix a record date for the determination of holders of any class of securities then entitled to receive, (I) options, warrants or other rights to subscribe for, purchase or otherwise acquire Common Stock (whether or not at the time exercisable) or, (ii)

evidence of indebtedness, shares or other securities by their terms convertible into or exchangeable for Common Stock (whether or not at the time so convertible or exchangeable) (the "Convertible Securities"), or options, warrants or rights to subscribe for, purchase or otherwise acquire such evidence of indebtedness, shares or other securities (whether or not at the time exercisable):

(1) the aggregate maximum number of shares of Common Stock deliverable upon exercise of such options, warrants or other rights to subscribe for, purchase or otherwise acquire Common Stock shall be deemed to have been issued at the time such options, warrants or rights were issued or on the record date, if it shall have been fixed, and for a consideration equal to the consideration (determined in the manner provided in the Sections 3(f)(I)(A) and 3(f)(I)(B), if any, received by the Company upon the issuance of such options, warrants or rights plus the minimum purchase price provided in such options, warrants or rights for the Common Stock covered thereby;

(2) the aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities, or upon the exercise of options, warrants or other rights to subscribe for, purchase or otherwise acquire such convertible or exchangeable securities and the subsequent conversion or exchange thereof, shall be deemed to have been issued at the time such securities were issued or on the record date, if it shall have been fixed, or such options, warrants or other rights were issued or on the record date, if it shall have been fixed, and for a consideration equal to the consideration, if any, received by the Company for any such securities and related options, warrants or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the additional consideration (determined in the manner provided in Sections 3(f)(I)(A) and 3(f)(I)(B), if any, to be received by the Company upon the conversion or exchange of such securities, or upon the exercise of any related options, warrants, or rights to purchase or acquire such convertible or exchangeable securities and the subsequent conversion or exchange thereof;

(3) on any change in the number of shares of Common Stock deliverable upon exercise of any such options, warrants or rights or conversion or exchange of such convertible or exchangeable securities or any change in the consideration to be received by the Company upon such exercise, conversion or exchange, including, but not limited to, a change resulting from the anti-dilution provisions thereof, the Conversion Price as then in effect shall forthwith be readjusted to such Conversion Price as would have been obtained had an adjustment been made upon the issuance of such options, warrants or rights not exercised prior to such change, or of such convertible or exchangeable securities not converted or exchanged prior to such change, upon the basis of such change;

(4) on the expiration or cancellation of any such options, warrants or rights, or the termination of the right to convert or exchange such convertible or exchangeable securities, if the Conversion Price shall have been adjusted upon the issuance thereof, the Conversion Price shall forthwith be readjusted to such Conversion Price as would have been obtained had an adjustment been made upon the issuance of such options, warrants, rights or such convertible or exchangeable securities on the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such options, warrants or rights, or upon the conversion or exchange of such convertible or exchangeable securities; and

(5) if the Conversion Price shall have been adjusted upon the issuance of any such options, warrants, rights or convertible or exchangeable securities, no further adjustment of the Conversion Price shall be made for the actual issuance of Common

Stock upon the exercise, conversion or exchange thereof; provided, however, that no increase in the Conversion Price shall be made pursuant to Sections 3(f)(I)(C)(1) or 3(f)(I)(C)(2).

(ii) **Excluded Stock.** “**Excluded Stock**” shall mean (A) up to 1,143 shares of Common Stock issuable to employees, consultants, officers and directors of the Company or others pursuant to any stock option plan, stock purchase plan or stock bonus plan, agreement or arrangement that is approved by the Board of Directors and the holders of a majority of the then outstanding Series A Preferred Stock, together with any such shares that are repurchased by the Company and reissued to any such employee, consultant, officer or director; (B) Common Stock that is issued upon conversion of Series A Preferred Stock; and (C) Common Stock issued that results in an adjustment as provided in Section 3(f)(iii) below. All shares of Excluded Stock which the Company has reserved for issuance shall be deemed to be outstanding for all purposes of computations under Section 3(f)(I).

(iii) **Stock Dividends, Subdivisions, Reclassifications or Combinations.** If the Company shall (A) declare or pay a dividend or make a distribution on its Common Stock in shares of its Common Stock or in any right to acquire Common Stock, (B) subdivide or reclassify the outstanding shares or Common Stock into a greater number of shares, or (C) combine, consolidate or reclassify the outstanding Common Stock into a smaller number of shares, then the Conversion Price in effect at the time of the record date for such dividend or distribution or the effective date of such subdivision, combination or reclassification shall be proportionately adjusted so that the holder of any shares of Series A Preferred Stock surrendered for conversion after such date shall be entitled to receive the number of shares of Common Stock which the holder would have owned or been entitled to receive had such Series A Preferred Stock been converted immediately prior to such date. Successive adjustments in the Conversion Price shall be made whenever any event specified above shall occur. If the Company 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 Company 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.

(iv) **Other Distributions.** If the Company fixes a record date for the making of a distribution to all holders of shares of its Common Stock (A) of shares of any class other than its Common Stock, (B) of evidence of indebtedness of the Company or any subsidiary, (C) of assets (excluding cash dividends or distributions, and dividends or distributions referred to in Section 3(f)(iii)), or (D) of rights or warrants (excluding those referred to in Section 3(f)(I)), in each such case the Conversion Price in effect immediately prior thereto shall be reduced immediately thereafter to the price determined by dividing (1) an amount equal to the difference resulting from (X) the number of shares of Common Stock outstanding on such record date multiplied by the applicable Conversion Price per share of Series A Preferred Stock on such record date, less (Y) the fair market value (as determined by the Board of Directors, in consultation with holders of a majority of the outstanding shares of Series A Preferred Stock) of said shares or evidenced of indebtedness or assets or rights or warrants to be so distributed, by (2) the number of shares of Common Stock outstanding on such record date. Such adjustment shall be made successively whenever such a record date is fixed. If such a distribution is not so made, the Conversion Price then in effect shall be readjusted, effective as of the date when the Board of Directors determines not to distribute such shares, evidences of indebtedness, assets, rights or warrants, as the case may be, to the Conversion Price which would then be in effect if such record date had not been fixed.

(v) **Consolidation, Merger, Sale, Lease or Conveyance.** In case of any consolidation with or mergers of the Company with or into another corporation, entity or person, or in case of any sale, lease or conveyance to another corporation, entity or person, of the assets of the Company an entirety or substantially as an entirety, each share of Series A Preferred Stock shall after the date of such consolidation, merger, sale, lease or conveyance be convertible into the number of shares of stock or other securities or property (including cash) to which the Common Stock issuable (at the time of such consolidation, merger, sale, lease or conveyance) upon conversion of such shares of Series A Preferred Stock would have been entitled upon such consolidation, merger, sale, lease or conveyance; and in any such case, if necessary, the provisions set forth herein with respect to the rights and interests thereafter of the holders of the shares of Series A Preferred Stock shall be appropriately adjusted so as to be applicable, as nearly as may reasonably be, to any shares of stock or other securities or property thereafter deliverable on the conversion of the shares of Series A Preferred Stock.

(vi) **Rounding of Calculations.** All calculations under this Section 3(f) shall be made to the nearest cent or to the nearest 1/100th of a share, as the case may be.

(vii) **Timing of Issuance of Additional Common Stock Upon Certain Adjustments.** In any case in which the provisions of this Section 3(f) require that an adjustment become effective immediately after a record date for an event, the Company may defer until the occurrence of such event (A) issuing to the holder of any share of Series A Preferred Stock converted after such record date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the shares of Common Stock issuable upon such conversion before giving effect to such adjustment and (B) paying to such holder any amount of cash in lieu of a fractional share of Common Stock pursuant to subsection (a) of this Section 3; **provided**, however, that, upon request, the Company shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares, and such cash, upon the occurrence of the event requiring such adjustment.

(g) **Current Market Price.** If the Common Stock is publicly traded, the Current Market Price at any date shall mean the average of the daily closing prices per share of Common Stock for 15 consecutive trading days ending no more than 5 trading days before such date (as adjusted for any stock dividend, split, combination or reclassification that took effect during such 15 trading day period). The closing price for each day shall be the last reported sale price or, in case no such reported sale takes place on such day, the average of the last closing bid and asked prices, in either case on the principal national securities exchange on which the Common Stock is listed or admitted to trading, or if not listed or admitted to trading on any national securities exchange, the closing sale price for such day reported by Nasdaq, if the Common Stock is traded over-the-counter and quoted in the National Market System, or if the Common Stock is so traded, but not so quoted, the average of the closing reported bid and asked prices of the Common Stock as reported by Nasdaq or any comparable system or, if the Common Stock is not listed on Nasdaq or any comparable system, the average of the closing bid and asked prices as furnished by two members of the National Association of Securities Dealers, Inc., selected from time to time by the Company for that purpose. If the Common Stock is not traded in such manner that the quotations referred to above are available for the period required hereunder, Current Market Price per share of Common Stock shall be deemed to be the fair market value as determined by the Board of Directors, irrespective of any accounting treatment.

(h) **Statement Regarding Adjustments.** Whenever the Conversion Price shall be adjusted as provided in Section 3(f), the Company shall forthwith file, at the office of any

transfer agent for the Series A Preferred Stock and at the principal office of the Company, a statement showing in detail the facts requiring such adjustments and the Conversion Price that shall be in effect after such adjustment, and the Company shall also cause a copy of such statement to be sent by mail, first class postage prepaid, to each holder of shares of Series A Preferred Stock at its address appearing on the Company's records. Each such statement shall be signed by the Company's independent public accountants, if applicable. Where appropriate, such copy may be given in advance and may be included as part of a notice required to be mailed under the provisions of Section 3(l).

(i) **Notice to Holders.** If the Company proposes to take any action of the type describe in Sections 3(f)(I) (but only if the action of the type described in Section 3(f)(I) would result in an adjustment in the Conversion Price of such series of Series A Preferred Stock), 3(f)(iii), 3(f)(iv) or 3(f)(v), the Company shall give notice to each holder of shares of Series A Preferred Stock in the manner set forth in Section 3(h), which notice shall specify the record date, if any, with respect to any such action and the approximate date on which such action is to take place. Such notice shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Conversion Price and the number, kind or class of shares or other securities or property which shall be deliverable upon conversion of shares of Series A Preferred Stock. In the case of any action which would require the fixing of a record date, such notice shall be given at least 10 days prior to the date so fixed, and in case of all other action, such notice shall be given at least 15 days prior to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

(j) **Treasury Stock.** For the purposes of this Section 3, the sale or other disposition of any Common Stock theretofore held in the Company's treasury shall be deemed to be an issuance thereof.

(k) **Costs.** The Company shall pay all documentary, stamp, transfer or other transactional taxes attributable to the issuance or delivery of shares of Common Stock upon conversion of any shares of Series A Preferred Stock; **provided**, however, that the Company shall not be required to pay any taxes which may be payable in respect of any transfer involved in the issuance or delivery of any certificate for such shares in a name other than that of the holder of the shares of Series A Preferred Stock in respect of which such shares are being issued.

(l) **Reservation of Shares.** The Company shall reserve at all times, as long as any shares of Series A Preferred Stock remain outstanding, free from preemptive rights, out of its treasury stock (if applicable) or its authorized but unissued shares of Common Stock, or both, solely for the purposes of effecting the conversion of the shares of Series A Preferred Stock, sufficient shares of Common Stock to provide for the conversion of all outstanding shares of Series A Preferred Stock.

(m) **Approvals.** If any shares of Common Stock to be reserved for the purpose of conversion of shares of Series A Preferred Stock require registration with or approval of any governmental authority under any Federal or state law before such shares may be validly issued or delivered upon conversion, then the Company will in good faith and as expeditiously as possible endeavor to secure such registration or approval, as the case may be. If, and so long as, any Common Stock into which the shares of Series A Preferred Stock are then convertible is listed on any national securities exchange, the Company will, if permitted by the rules of such exchange, list and keep listed on such exchange, upon official notice of issuance, all shares of such Common Stock issuable upon conversion.

(n) **Valid Issuance.** Upon issuance by the Company, all share of Common Stock which may be issued upon conversion of the shares of Series A Preferred Stock shall be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issuance thereof, and the Company shall take no action which will cause a contrary result (including but not limited to, any action which would cause the Conversion Price to be less than the par value, if any, of the Common Stock).

(o) **No Impairment.** The Company will not, by amendment of its Amended and Restated Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Amended and Restated Certificate of Incorporation and in the taking of all such action as may be necessary or appropriate to protect the rights of the holders of the Series A Preferred Stock against impairment.

4. **Redemption.**

(a) **Redemption at the Option of the Company.** The Company shall not have the right to call or redeem any shares of the Series A Preferred Stock and the Company shall not purchase or otherwise acquire for value any outstanding shares of Series A Preferred Stock except as provided in Section 4(b) hereof or pursuant to the Master Rights Agreement of the Company dated the date of the original issuance of the Series A Preferred Stock (the "**Master Rights Agreement**").

(b) **Redemption at the Option of the Holders.** From and after April 15, 2011, through and until the consummation of a Qualified Public Offering, the holders of the shares of a particular series of Series A Preferred Stock, upon the written approval of the holders of at least 50.1% of the shares of such series then outstanding may require the Company to redeem all of the Series A Preferred Stock held by them by delivery of a written notice requesting such redemption (the "**Redemption Notice**") under the provisions hereof. Within five days after the receipt of a Redemption Notice (the "**Redemption Date of Receipt**"), the Company shall deliver written notice to all other holders of the affected series informing each such hold of (i) the receipt of such Redemption Notice, (ii) the Redemption Date of Receipt, (iii) the number of shares of such series requested to be redeemed in the Redemption Notice and (iv) the total number shares of such series outstanding as of the Redemption Date of Receipt. Any such holder desiring to have any of its shares of such series redeemed by the Company at such time shall have until 30 days after the notice of the determination of the Redemption Price (the "**Redemption Exercise Period**"), in which to notify the Company of the number of shares which such holder desires the Company to redeem. The Company shall redeem the number of shares of Series A Preferred Stock so requested to be redeemed at the purchase price equal to the greater of (A) \$2.00 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), respectively, for each outstanding share of Series A Preferred Stock plus cumulated but unpaid dividends thereon at the compounded rate of 6% per annum from the original issuance date to the Redemption Date or (B) a price per share equal to such share's "Fair Market Value" (the "**Redemption Price**"). "Fair Market Value" shall mean an amount equal to the value of the Series A Preferred Stock as determined by agreement between the Company and the holders of a majority of the outstanding shares of Series A Preferred Stock. If they are unable to agree, Fair Market Value shall be an amount equal to the value of the Series A Preferred Stock as determined by either (X) a written appraisal, accepted by the Company, obtained by the holders of the Series A Preferred Stock (the "**Holder's Appraisal**"), (Y) the mean between the Holder's Appraisal and a written appraisal obtained by the Company (the "**Company's Appraisal**") if the Company does

not accept the Holder's Appraisal and provided that the value set forth in the Company Appraisal does not differ from the value set forth in the Holder's Appraisal by more than 10% of the value set forth in the Holder's Appraisal, or (2) if the provisions of clauses (X) or (Y) above can not be applied, a written appraisal of a firm, independent of the Company and the holders of the Series A Preferred Stock, which is experienced in making such appraisals and enjoys a national reputation for excellence in the appraisal field and which is selected by the two appraisers referred to in clause (Y) above. In making the appraisals contemplated hereby, the appraisers shall determine value based on a hypothetical sale of 100% of the equity of the Company to a willing buyer in an orderly sale process and there shall be no deduction for the fact that the shares of Series A Preferred Stock represent a minority of the voting power of the Company or that such shares are not freely tradable. The cost of the appraisals referred to herein shall be borne by the Company and the holders with the holders bearing the percentage of such costs equal to the percentage of shares of capital stock owned by such holders on a fully diluted as if converted basis with each such holder bearing its pro rata share of such costs. The Company shall pay for shares redeemed hereunder by delivery of cash in the amount of the Redemption Price on the six month anniversary of the Redemption Notice (the "**Redemption Date**").

(c) **Partial Redemption.** In the event of the redemption of only a portion of the shares of Series A Preferred Stock requested to be redeemed, the Company shall effect such redemption pro rata from the requesting holders in proportion to the aggregate Redemption Price of the shares of such series held by each such holder.

(d) **Surrender of Stock.** On or before the Redemption Date, each holder of shares of Series A Preferred Stock to be redeemed, unless the holder has exercised his right to convert the shares as provided in Section 3 hereof, shall surrender the certificate or certificates representing such shares to the Company, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be cancelled and retired. In the event less than all of the shares represented by such certificate are redeemed, a new certificate representing the unredeemed shares shall be issued to the holder of such shares.

5. **Voting Rights, Directors.**

(a) **Series A Preferred Stock.** In addition to the special voting rights provided in Section 5(c), the holders of shares of Series A Preferred Stock shall be entitled to vote on all matters on which holders of the Common Stock have the right to vote. The holders of shares of Series A Preferred Stock shall be entitled to the number of votes equal to the number of full shares of Common Stock into which such shares of Series A Preferred Stock could be converted pursuant to the provisions of Section 3 at the record date for the determination of the stockholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited. Such votes shall be counted together with all other shares of capital stock having general voting power and shall not be counted separately as a class. In all cases where the holders of shares of Series A Preferred Stock have the right to vote separately as a class, such holders shall be entitled to one vote for each such share of Common Stock into which each share of Series A Preferred Stock held by them is then convertible.

(b) **Fractional Votes.** For the purposes of Section 5(a), fractional votes shall not be permitted. Any fractional voting rights resulting from the formulas described in Section 5(a) shall be rounded to the nearest whole number (with one-half being rounded upward).

(c) **Protective Provisions.**

(i) Subject to the rights of any series of Preferred Stock which may from time to time come into existence, without the consent of the holders of a majority of the shares of Series A Preferred Stock, then outstanding (voting together as a single class and on an as-converted basis), given in writing or by vote at a meeting of stockholders called for such purposes, the Company shall not:

(A) effect a sale of the Company whether by merger, reorganization or sale of all or substantially all of the Company's assets or business, or otherwise, other than in a transaction in which greater than 51% of the consideration is in cash;

(B) take any action which would result in the dissolution or winding up of the Company;

(C) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock so as to affect adversely the shares;

(D) increase the authorized number of shares of Series A Preferred Stock;

(E) issue shares of Common Stock below Fair Market Value;

(F) authorize or issue, or obligate itself to issue, any other equity security (including any security convertible into or exercisable for any equity security) senior to or on a parity with the Series A Preferred Stock with respect to redemption, voting, dividend or liquidation rights or preferences, or authorize or issue shares of stock of any class or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any shares of stock of the Company having any preferences or priority as to dividends or other rights superior to or on a parity with the redemption, voting, dividend or liquidation rights or preferences of the Series A Preferred Stock;

(G) do any act or thing which would result in taxation of the holders of Preferred Stock under Section 305 of the Internal Revenue Code;

(H) declare or pay any dividend, or redeem or repurchase any shares of capital stock of the Company, except for any dividend declared and paid on the Common Stock where a dividend is declared and paid on the Series A Preferred Stock in an amount equal to the aggregate amount of such dividends for all shares of Common Stock into which such shares of Series A Preferred Stock could then be converted and for redemptions or repurchases pursuant to (1) Section 4 hereof, (2) the Master Rights Agreement, or (3) up to 1,143 shares of Common Stock issued pursuant to any stock option plan, stock purchase plan or stock bonus plan, agreement or arrangement, that is approved by the Board of Directors and the holders of a majority of the outstanding Series A Preferred Stock and which authorized such redemption or repurchase upon the termination the services relationship giving rise to such issuance;

(I) effect any acquisition of another person, whether by merger, reorganization or acquisition of assets; or

(J) change the business of the Company to something other than business conducted or proposed to be conducted by the Company on the date hereof.

(ii) The provisions of this Section 5(c) shall expire upon the earliest of the following events (A) immediately prior to the consummation of a Qualified Public Offering, or (B) at such time as there are less than 925,000 issued and outstanding shares of Series A Preferred Stock (as appropriately adjusted for any stock split, stock dividend, recapitalization, reorganization, merger or consolidation).

(d) **Voting for the Election of Directors.** At each annual election of directors, the holders of Series A Preferred Stock shall be entitled (but are not required) to elect one director of the Company and (ii) the holders of the Series A Preferred Stock and Common Stock (voting together as a single class and not as separate series, and on an as-converted basis) shall be entitled to elect any remaining directors of the Company (the "**Remaining Directors**").

In the case of any vacancy (other than a vacancy caused by removal) in the office of a director occurring among the director elected by the holders of a Series A Preferred Stock pursuant to this Section 5(d), the holders of the Series A Preferred Stock shall, by the affirmative vote of a majority thereof, elect a successor or successors to hold office for the unexpired term of the director whose place shall be vacant. Any director who shall have been elected by the holders of Series A Preferred Stock as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of Series A Preferred Stock entitled to elect such director, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of Series A Preferred Stock represented at the meeting or pursuant to unanimous written consent.

6. **No Reference of Preferred Stock.** No shares or shares of Series A Preferred Stock acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Company shall be authorized to issue.

ARTICLE V

Except as otherwise provided in this Amended and Restated 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 Company.

ARTICLE VI

Elections of directors need not be by written ballot unless the Bylaws of the Company shall so provide.

ARTICLE VII

Meeting of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Company 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 Company.

ARTICLE VIII

To the fullest extent that the General Corporation Law of the State of Delaware, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination

of the liability of directors, no director of the Company shall be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director. Notwithstanding the foregoing, a director shall be liable to the extent provided by applicable law (1) for any breach of the directors' duty of loyalty to the Company or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under section 174 of the General Corporation Law of the State of Delaware, or (4) for any transaction from which the director derived any improper personal benefit. Neither the amendment or repeal of this Article, nor the adopting of any provision of this Amended and Restate Certificate of Incorporation inconsistent with this Article shall adversely affect any right or protection of a director of the Company existing at the time of such amendment or repeal. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article further eliminating or limiting the personal liability of directors then the liability of a director of the Company shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law as so amended.

ARTICLE IX

The Company shall, to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, or by any successor thereto, indemnify any and all persons whom it shall have power to indemnify under said sections from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section. The Company shall advance expenses to the fullest extent permitted by said section. Such right to indemnification and advancement of expenses shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. The indemnification and advancement of expenses provided for herein shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any By-Law, agreement, vote of stockholders or disinterested directors or otherwise.

Any repeal or modification of any of the foregoing provisions of the Article shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any director of this Company with respect to any acts or omissions of such director, officer or agent occurring prior to such repeal or modification.

ARTICLE X

Whenever a compromise or arrangement is proposed between this Company and its creditors or any class of them and/or between this Company and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Company or any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Company under the provision of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Company under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, , and/or of the stockholders or class of stockholders, of this Company, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders, of this Company, as the case may be, agree to any compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders of this Company, as the case may be, and also on this Company.

ARTICLE XI


The Company reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner nor or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

THIRD: The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law.

FOURTH: That said amendment and restatement was duly adopted in accordance with the provisions of Section 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, the Company has caused this Amended and Restated Certificate of Incorporation to be signed and executed in its corporate name by its Chairman and Chief Executive Officer, William Greenblatt, as of the 17th day of April, 2006.

STERLING TESTING SYSTEMS, INC.



William Greenblatt, Chairman and CEO