

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>		NEW ASSIGNMENT	
<b>NATURE OF CONVEYANCE:</b>		CHANGE OF NAME	
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Yadav Technology, Inc.		12/18/2009	CORPORATION: CALIFORNIA
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Avalanche Technology, Inc.		
<b>Street Address:</b>	48371 Fremont Blvd.		
<b>Internal Address:</b>	Suite 101		
<b>City:</b>	Fremont		
<b>State/Country:</b>	CALIFORNIA		
<b>Postal Code:</b>	94538		
<b>Entity Type:</b>	CORPORATION: DELAWARE		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	77555366	AVALANCHE TECHNOLOGIES	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(408)850-9980		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	4082718752		
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<b>Correspondent Name:</b>	Maryam Imam		
<b>Address Line 1:</b>	95 South Market Street		
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<b>ATTORNEY DOCKET NUMBER:</b>	AVALANCHE-0006C		
<b>NAME OF SUBMITTER:</b>	Maryam Imam		
<b>Signature:</b>	/maryam imam/		

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Date:

06/01/2010

**Total Attachments: 19**

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THIRD AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
YADAV TECHNOLOGY, INC.

Petro Estakhri hereby certifies that:

**ONE:** The original name of this company is Yadav Technology, Inc., and the date of filing the original Certificate of Incorporation of this company with the Secretary of State of the State of Delaware was April 20, 2006.

**TWO:** He is the duly elected and acting President and Chief Executive Officer of Yadav Technology, Inc., a Delaware corporation.

**THREE:** The Certificate of Incorporation of this company is hereby amended and restated (this "*Restated Certificate*") to read as follows:

I.

The name of this corporation is Avalanche Technology, Inc. (the "*Company*").

II.

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

III.

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law ("*DGCL*").

IV.

A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is one hundred two million three hundred ninety four thousand two hundred thirty seven (102,394,237). Sixty million (60,000,000) shares shall be Common Stock, each having a par value of \$0.0001. Forty-two million three hundred ninety four thousand two hundred thirty seven (42,394,237) shares shall be Preferred Stock, each having a par value of \$0.0001. Effective upon the filing of this Restated Certificate, each outstanding share of the Series A Preferred Stock of the Corporation will be converted and reconstituted into one share of Series A-1 Preferred Stock with the rights, preferences, privileges, and restrictions granted to and imposed herein, and each outstanding share of the Series B Preferred Stock of the Corporation will be converted and reconstituted into one share of Series A-2 Preferred Stock, with the rights, preferences, privileges, and restrictions granted to and imposed herein (the "*Preferred Stock Conversion*"). The Preferred Stock Conversion shall occur without any further

action on the part of the Company or the holders of the Series A Preferred Stock or Series B Preferred Stock, and whether or not certificates representing such holder's shares or capital stock prior to the Preferred Stock Conversion are surrendered for cancellation. Upon the effectiveness of the Preferred Stock Conversion set forth in this Article IV(A), the shares Series A Preferred Stock and Series B Preferred Stock so converted shall be cancelled and not subject to reissuance. Without limiting the foregoing, the holder of any shares of Series A Preferred Stock or Series B Preferred stock so converted into Series A-1 Preferred Stock or Series A-2 Preferred Stock, as the case may be, pursuant to this Article IV(A) shall deliver to the Company during regular business hours at the office of any transfer agent of the Company for such shares, or at such other place as may be designated by the Company, the certificate or certificates representing the shares so converted, duly endorsed or assigned in blank or to the Company. As promptly thereafter as is practicable, the Company shall issue and deliver to such stockholder, at the place designated by such stockholder, a certificate or certificates for the number of full shares of Series A-1 Preferred Stock or Series A-2 Preferred Stock to which such stockholder is entitled. The person in whose name the certificate for such shares of Series A-1 Preferred Stock or Series A-2 Preferred Stock is to be issued shall be deemed to have become a holder of such shares on the effective date of Preferred Stock Conversion pursuant to this Article IV(A). All numbers and references in this Restated Certificate reflect the Preferred Stock Conversion.

B. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Company then outstanding (voting together as a single class on an as-if-converted basis), irrespective of the provisions of Section 242(b)(2) of the DGCL.

C. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A-1 Preferred Stock, which series shall consist of four million seven hundred fifty thousand (4,750,000) shares (the "*Series A-1 Preferred Stock*"), the Series A-2 Preferred Stock, which series shall consist of seven million six hundred forty four thousand two hundred thirty seven (7,644,237) shares (the "*Series A-2 Preferred Stock*"), the Series B Preferred Stock which series shall consist of fifteen million (15,000,000) shares (the "*Series B Preferred Stock*," and the Series C Preferred Stock which series shall consist of fifteen million (15,000,000) shares (the "*Series C Preferred Stock*" and together with the Series A-1 Preferred Stock, the Series A-2 Preferred Stock and the Series B Preferred Stock, the "*Series Preferred*"), are as set forth below in Article IV(D).

D. The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows:

1. **DIVIDEND RIGHTS**

a. Holders of Series Preferred, in preference to the holders of Common Stock, shall be entitled to receive, when and as declared by the Board of Directors (the "*Board*"), but only out of funds that are legally available therefore, cash dividends at the rate of eight percent (8%) of the Series A-1 Original Issue Price (as defined below), the Series A-2 Original Issue Price (as defined below), the Series B Original Issue Price (as defined below), or the Series C Original Issue Price (as defined below), respectively, per annum on each

outstanding share of Series Preferred. Such dividends shall be payable only when, as and if declared by the Board and shall be non-cumulative. Payment of any dividends to the holders of the Series Preferred shall be on a pari passu basis.

b. The "*Series A-1 Original Issue Price*" of the Series A-1 Preferred Stock shall be forty cents (\$0.40) (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof).

c. The "*Series A-2 Original Issue Price*" of the Series A-2 Preferred Stock shall be sixty six and five tenths cents (\$0.665) (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof).

d. The "*Series B Original Issue Price*" of the Series B Preferred Stock shall be sixty six and five tenths cents (\$0.665) (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof).

e. The "*Series C Original Issue Price*" of the Series C Preferred Stock shall be eighty two and seventy-two hundredths cents (\$0.8272) (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof).

f. So long as any shares of Series Preferred are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Common Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock until all dividends as set forth in Section 1(a) above on the Series Preferred shall have been paid or declared and set apart, except for:

(i) acquisitions of Common Stock by the Company issued to or held by employees, officers, directors, consultants or other service providers to the Company pursuant to agreements which permit the Company to repurchase such shares at cost (or the lesser of cost or fair market value) upon termination of services to the Company; or

(ii) acquisitions of Common Stock issued to or held by employees, officers, directors, consultants or other service providers to the Company in exercise of the Company's right of first refusal to repurchase such shares; or

(iii) distributions to holders of Common Stock in accordance with Sections 3 and 4 hereof.

g. In the event dividends are paid on any share of Common Stock, the Company shall pay an additional dividend on all outstanding shares of Series Preferred in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

h. The provisions of Sections 1(f) and 1(g) shall not apply to a dividend payable solely in Common Stock to which the provisions of Section 5(f) hereof are

applicable, or any repurchase of any outstanding securities of the Company that is approved by the Board.

i. Whenever a distribution provided for in this Section 1 shall be payable in property other than cash, the value of such distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board.

## 2. VOTING RIGHTS.

a. **General Rights.** Each holder of shares of the Series Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series Preferred could be converted (pursuant to Section 5 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Common Stock and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company. Except as otherwise provided herein or as required by law, the Series Preferred shall vote together with the Common Stock at any annual or special meeting of the stockholders and not as a separate class, and may act by written consent in the same manner as the Common Stock.

b. **Separate Vote of Series Preferred.** For so long as at least thirty percent (30%) of the originally issued shares of Series Preferred (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series Preferred after the filing date hereof) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least sixty percent (60%) of the outstanding Series Preferred shall be necessary for effecting or validating the following actions (by merger, consolidation or otherwise):

(i) Any waiver, amendment, alteration, or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Designation);

(ii) Any increase or decrease in the authorized number of shares of Common Stock or Series Preferred;

(iii) Any authorization or any designation of any new class or series of stock or any other securities convertible into equity securities of the Company ranking on a parity with or senior to the Series Preferred in right of redemption, payments upon liquidation, voting or dividend rights;

(iv) Any redemption, repurchase, payment or declaration of dividends or other distributions with respect to Common Stock or Preferred Stock other than dividends required pursuant to Section 1 hereof (except for acquisitions of Common Stock by the Company permitted by Section 1(f)(i), (ii) and (iii) hereof;

(v) Any liquidation, dissolution or winding up of the Company or a Deemed Liquidation Event (as defined below);

(vi) Increase or decrease the authorized size of the Board.

(vii) Any amendment of this Section 2(b).

**c. Election of Board of Directors.**

(i) For so long as at least 2,500,000 shares of Series B Preferred Stock remain outstanding (subject to adjustment for any stock split, reverse stock event affecting the Series Preferred after the hereof), the holders of Series B Preferred Stock, voting as a separate series, shall be entitled to elect three (3) members of the Board (the "*Series B Directors*") at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(ii) For So long as at least 1,800,000 shares of Series A-1 Preferred Stock and Series A-2 Preferred Stock remain outstanding (subject to adjustment for any stock split, reverse stock event affecting the Series Preferred after the hereof), the holders of Series A-1 Preferred Stock and Series A-2 Preferred Stock, voting together as a single class on an as-if converted basis, shall be entitled to elect one (1) member of the Board (the "*Series A Director*") and together with the Series B Directors, the "*Preferred Stock Directors*") at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director.

(iii) The holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(iv) The holders of Common Stock and Series Preferred, voting together as a single class on an as-if-converted basis, shall be entitled to elect all remaining members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(v) No person entitled to vote at an election for directors may cumulate votes to which such person is entitled, unless, at the time of such election, the Company is subject to Section 2115 of the California Corporations Code ("CCC"). During such time or times that the Company is subject to Section 2115 of the CCC, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder desires. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's

intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

(vi) During such time or times that the Company is subject to Section 2115 of the CCC, one or more directors may be removed from office at any time without cause by the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote for that director as provided above; provided, however, that unless the entire Board is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that director if voted cumulatively at an election which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected.

### 3. LIQUIDATION RIGHTS.

a. Unless the holders of at least sixty percent (60%) of the Series Preferred elect otherwise, for purposes of this Section 3, upon a liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the holders of shares of Series Preferred then outstanding shall be entitled to be paid, on a pari passu basis, out of the assets of the Company available for distribution to its stockholders before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the Original Issue Price of each such series of Series Preferred, plus any dividends declared but unpaid thereon. If upon any such liquidation, dissolution or winding up of the Company, the assets of the Company available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series Preferred the full amount to which they shall be entitled under this Section 3(a), the holders of shares of Series Preferred shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

b. After the payment of the full liquidation preference of the Series Preferred as set forth in Section 3(a) above, the assets of the Company legally available for distribution in such liquidation, dissolution or winding up of the Company, if any, shall be distributed ratably to the holders of the Common Stock according to the number of outstanding shares of Common Stock then held by each such holder.

c. Notwithstanding the above, for purposes of determining the amount each holder of shares of Series Preferred is entitled to receive with respect to a such liquidation, dissolution or winding up of the Company, each such holder of shares of a series of Series Preferred shall be deemed to have converted (regardless of whether such holder actually converted) such holder's shares of such series into shares of Common Stock immediately prior to such liquidation, dissolution or winding up of the Company if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such series of Series Preferred



into shares of Common Stock. If any such holder shall be deemed to have converted shares of Series Preferred into Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of Series Preferred that have not converted (or have not been deemed to have converted) into shares of Common Stock.

#### 4. ASSET TRANSFER OR ACQUISITION RIGHTS.

a. In the event that the Company is a party to an Acquisition or Asset Transfer (as hereinafter defined), then each holder of Series Preferred shall be entitled to receive, for each share of Series Preferred then held, out of the proceeds of such Acquisition or Asset Transfer, the amount of cash, securities or other property to which such holder would be entitled to receive in a liquidation, dissolution or winding up of the Company pursuant to Section 3(a) above.

b. For the purposes of this Section 4, unless sixty percent (60%) of the Series Preferred consent otherwise: (i) "Acquisition" shall mean (A) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, continue to hold at least a majority of the voting power of the surviving entity in substantially the same proportions (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions to which the Company is a party in which in excess of fifty percent (50%) of the Company's voting power is transferred; provided that an Acquisition shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof; and (ii) "Asset Transfer" shall mean a sale, transfer, or an exclusive, irrevocable license pursuant to a single transaction or series of related transactions or other disposition of all or substantially all of the assets or intellectual property of the Company. Each of an Acquisition and an Asset Transfer shall also be considered a "*Deemed Liquidation Event*."

c. In any Deemed Liquidation Event, if the consideration to be received is securities of a corporation or other property other than cash, its value will be deemed its fair market value as determined in good faith by the Board on the date such determination is made, except that any publicly-traded securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Company shall be valued as follows:

(1) If the securities are then traded on a national securities exchange or the NASDAQ Stock Market (or a similar national quotation system), then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange or system over the ten (10) trading day period ending five (5) trading days prior to the distribution;

(2) If the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the

securities over the ten (10) trading day period ending five (5) trading days prior to the distribution.

In the event of a Deemed Liquidation Event, the distribution date shall be deemed to be the date such transaction closes.

## 5. CONVERSION RIGHTS.

The holders of the Series Preferred shall have the following rights with respect to the conversion of the Series Preferred into shares of Common Stock (the "*Conversion Rights*"):

a. **Optional Conversion.** Subject to and in compliance with the provisions of this Section 5, any shares of Series Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Series Preferred Conversion Rate" then in effect (determined as provided in Section 5(b)) by the number of shares of Series Preferred being converted.

b. **Series Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of the Series A-1 Preferred Stock (the "*Series A-1 Preferred Conversion Rate*") shall be the quotient obtained by dividing the Series A-1 Original Issue Price by the "Series A-1 Preferred Conversion Price," calculated as provided in Section 5(c). The conversion rate in effect at any time for conversion of the Series A-2 Preferred Stock (the "*Series A-2 Preferred Conversion Rate*") shall be the quotient obtained by dividing the Series A-2 Original Issue Price by the "Series A-2 Preferred Conversion Price," calculated as provided in Section 5(c). The conversion rate in effect at any time for conversion of the Series B Preferred Stock (the "*Series B Preferred Conversion Rate*") shall be the quotient obtained by dividing the Series B Original Issue Price by the "Series B Preferred Conversion Price," calculated as provided in Section 5(c). The conversion rate in effect at any time for conversion of the Series C Preferred Stock (the "*Series C Preferred Conversion Rate*") shall be the quotient obtained by dividing the Series C Original Issue Price by the "Series C Preferred Conversion Price," calculated as provided in Section 5(c).

c. **Series Preferred Conversion Price.** The conversion price for the Series A-1 Preferred Stock shall initially be the Series A-1 Original Issue Price (the "*Series A-1 Preferred Conversion Price*"). Such initial Series A-1 Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 5. The conversion price for the Series A-2 Preferred Stock shall initially be the Series A-2 Original Issue Price (the "*Series A-2 Preferred Conversion Price*"). Such initial Series A-2 Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 5. The conversion price for the Series B Preferred Stock shall initially be the Series B Original Issue Price (the "*Series B Preferred Conversion Price*"). Such initial Series B Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 5. The conversion price for the Series C Preferred Stock shall initially be the Series C Original Issue Price (the "*Series C Preferred Conversion Price*") and together with the Series B Preferred Conversion Price, the Series A-1 Preferred Conversion Price and the Series A-2 Preferred Conversion Price, each a

**"Series Preferred Conversion Price"**). Such initial Series C Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Series A-1 Preferred Conversion Price, the Series A-2 Preferred Conversion Price, the Series B Preferred Conversion Price and the Series C Preferred Conversion Price herein shall mean the Series A-1 Preferred Conversion Price, the Series A-2 Preferred Conversion Price, the Series B Preferred Conversion Price and the Series C Preferred Conversion Price, each as so adjusted.

**d. Mechanics of Conversion.** Each holder of Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 5 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board as of the date of such conversion), any declared and unpaid dividends on the shares of Series Preferred being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Series Preferred. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

**e. Adjustment for Stock Splits and Combinations.** If at any time or from time to time on or after the date that the first share of Series B Preferred Stock is issued (the "**Original Issue Date**") the Company effects a subdivision of the outstanding Common Stock without a corresponding subdivision of the Series Preferred, the Series Preferred Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Original Issue Date the Company combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Series Preferred, the Series Preferred Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 5(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

**f. Adjustment for Common Stock Dividends and Distributions.** If at any time or from time to time on or after the Original Issue Date the Company pays to holders of Common Stock a dividend or other distribution in additional shares of Common Stock without a corresponding dividend or other distribution to holders of Preferred Stock, the Series Preferred Conversion Price then in effect shall be decreased as of the time of such issuance, as provided below:

(i) The Series Preferred Conversion Price shall be adjusted by multiplying the Series Preferred Conversion Price then in effect by a fraction equal to:

(a) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and

(b) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

(ii) If the Company fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the Series Preferred Conversion Price shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date; and

(iii) If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series Preferred Conversion Price shall be adjusted pursuant to this Section 5(f) to reflect the actual payment of such dividend or distribution.

**g. Adjustment for Reclassification, Exchange, Substitution, Reorganization, Merger or Consolidation.** If at any time or from time to time on or after the Original Issue Date the Common Stock issuable upon the conversion of the Series Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, merger, consolidation or otherwise (other than a Deemed Liquidation Event as defined in Section 4 or a subdivision or combination of shares or stock dividend provided for elsewhere in this Section 5), in any such event each holder of Series Preferred shall then have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, merger, consolidation or other change by holders of the maximum number of shares of Common Stock into which such shares of Series Preferred could have been converted immediately prior to such recapitalization, reclassification, merger, consolidation or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the Series Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

**h. Sale of Shares Below Series Preferred Conversion Price.**

(i) If at any time or from time to time on or after the Original Issue Date the Company issues or sells, or is deemed by the express provisions of this Section 5(h) to have issued or sold, Additional Shares of Common Stock (as defined below), other than as provided in Section 5(e), 5(f) or 5(g) above, for an Effective Price (as defined below) less than the then effective Series Preferred Conversion Price (a "*Qualifying Dilutive*

**Issuance**"), then and in each such case, the then existing Series Preferred Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Series Preferred Conversion Price in effect immediately prior to such issuance or sale by a fraction equal to:

(a) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the Aggregate Consideration (as defined below) received or deemed received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such Series Preferred Conversion Price, and

(b) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued.

For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Series Preferred could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock which are issuable upon the exercise or conversion of all other rights, options and convertible securities outstanding on the day immediately preceding the given date.

(ii) No adjustment shall be made to the Series Preferred Conversion Price in an amount less than one cent per share. Any adjustment required by this Section 5(h) shall be rounded to the nearest one cent \$0.01 per share. Any adjustment otherwise required by this Section 5(h) that is not required to be made due to the preceding two sentences shall be included in any subsequent adjustment to the Series Preferred Conversion Price.

(iii) For the purpose of making any adjustment required under this Section 5(h), the aggregate consideration received by the Company for any issue or sale of securities (the "**Aggregate Consideration**") shall be defined as: (A) to the extent it consists of cash, be computed at the gross amount of cash received by the Company before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale and without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board, provided that publicly traded securities will be valued in accordance with Section 4(c) hereof, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined below) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iv) For the purpose of the adjustment required under this Section 5(h), if the Company issues or sells (x) Preferred Stock or other stock, options, warrants, purchase rights or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "*Convertible Securities*") or (y) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the Series Preferred Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities plus:

(a) in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options; and

(b) in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company upon the conversion thereof (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities); provided that if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses.

(c) If the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; *provided, further*, that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities.

(d) No further adjustment of the Series Preferred Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock or the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series Preferred Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series Preferred Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company

for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, *provided*, that such readjustment shall not apply to prior conversions of Series Preferred.

(v) For the purpose of making any adjustment to the Conversion Price of the Series Preferred required under this Section 5(h), "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 5(h) (including shares of Common Stock subsequently reacquired or retired by the Company), other than:

(a) shares of Common Stock issued upon conversion of the Series Preferred or as a dividend or distribution to the holders of Series Preferred;

(b) shares of Common Stock or Convertible Securities, issued after the Original Issue Date to employees, officers or directors of, or consultants, service providers or advisors to the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board;

(c) shares of Common Stock issued pursuant to the exercise of Convertible Securities outstanding as of the Original Issue Date in each case provided such issuance is pursuant to the terms of such Convertible Security as such terms exist as of the Original Issue Date;

(d) shares of Common Stock or Convertible Securities issued pursuant to the bona fide acquisition of another entity by the Company by merger or consolidation with, purchase of substantially all of the assets of, or purchase of more than fifty percent of the outstanding equity securities of, the other entity, or similar business combination approved by the Board, including the approval of each of the Preferred Stock Directors;

(e) shares of Common Stock or Convertible Securities issued in connection with any stock split, stock dividend or recapitalization by the Company;

(f) shares of Common Stock or Convertible Securities issued to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial or lending institution approved by the Board and for primarily non-equity financing purposes;

(g) any Common Stock or Convertible Securities issued for primarily non-equity financing purposes to persons or entities with which the Company has a business relationship, which issuances are approved by the Board, including the approval of each of the Preferred Stock Directors;

(h) shares of Common Stock or Convertible Securities issued or issuable hereafter that are approved by the Board, including the approval of each of the Preferred Stock Directors or by holders of at least sixty percent (60%) of the Preferred Stock

(voting together as a single class) as being excluded from the definition of "Additional Shares of Common Stock" under this Section 5(h)(v); and

(i) shares of Common Stock issued in a Qualified Initial Public Offering (as defined in section 5(k)(i) below).

References to Common Stock in the subsections of this clause (v) above shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 5(h). The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company under this Section 4(h), into the Aggregate Consideration received, or deemed to have been received by the Company for such issue under this Section 5(h), for such Additional Shares of Common Stock. In the event that the number of shares of Additional Shares of Common Stock or the Effective Price cannot be ascertained at the time of issuance, such Additional Shares of Common Stock shall be deemed issued immediately upon the occurrence of the first event that makes such number of shares or the Effective Price, as applicable, ascertainable.

(vi) In the event that the Company issues or sells, or is deemed to have issued or sold, Additional shares or Common Stock in a Qualifying Dilutive Issuance (the "*First Dilutive Issuance*"), then in the event that the Company issues or sells, or is deemed to have issued or sold, Additional Shares of Common Stock in a Qualifying Dilutive Issuance other than the First Dilutive Issuance as a part of the same transaction or series of related transactions as the First Dilutive Issuance (a "*Subsequent Dilutive Issuance*"), then and in each such case upon a Subsequent Dilutive Issuance the Series Preferred Conversion Price shall be reduced to the Series Preferred Conversion Price that would have been in effect had the First Dilutive Issuance and each Subsequent Dilutive Issuance all occurred on the closing date of the First Dilutive Issuance.

i. **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series Preferred Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series Preferred, if the Series Preferred is then convertible pursuant to this Section 5, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and shall prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series Preferred at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Series Preferred Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series Preferred. Failure to provide such notice shall have no effect on any such adjustment.

j. **Notices of Record Date.** Upon (i) any taking by the company of a record of the holders of any class of securities for the purpose of determining the holders thereof



who are entitled to receive any dividend or other distribution, or (ii) any liquidation, dissolution or winding up of the Company or Deemed Liquidation Event, the Company shall mail to each holder of Series Preferred at least fifteen (15) days prior to (x) the record date, if any, specified therein; or (y) if no record date is specified, the date upon which such action is to take effect (or, in either case, such shorter period approved by the holders of a majority of the outstanding Series Preferred) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such liquidation, dissolution or winding up of the Company or Deemed Liquidation Event is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such liquidation, dissolution or winding up of the Company or Deemed Liquidation Event.

**k. Automatic Conversion.**

(i) Each share of Series Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series Preferred Conversion Price, (A) at any time upon the written consent of the holders of at least sixty percent (60%) of the outstanding shares of the Series Preferred, or (B) immediately upon the closing of a Qualified Initial Public Offering. A "Qualified Initial Public Offering" shall mean a firmly 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 for the account of the Company in which the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least \$30,000,000. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

(ii) Upon the occurrence of either of the events specified in Section 5(k)(i) above, the outstanding shares of Series Preferred 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 certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series Preferred, the holders of Series Preferred shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

**l. Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series Preferred. All shares of Common Stock (including fractions

thereof) issuable upon conversion of more than one share of Series Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion 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 share of Common Stock (as determined by the Board) on the date of conversion.

**m. Reservation of Stock Issuable Upon Conversion.** The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series Preferred, the Company will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

**n. Notices.** Any notice required by the provisions of this Section 5 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

**o. Payment of Taxes.** The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series Preferred.

**p. No Impairment.** Without the appropriate vote of its stockholders under DGCL or Section (2)(b) of this Article IV, the Company shall not amend its Restated Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect all of the rights of the holders of the Series Preferred, including the conversion rights of the holders of the Series Preferred against dilution or other impairment.

## **6. NO REISSUANCE OF SERIES PREFERRED.**

No shares or shares of Series Preferred acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued.

## V.

A. The liability of the directors for monetary damages shall be eliminated to the fullest extent under applicable law. If the DGCL is amended to authorize corporate action 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 DGCL, as so amended.

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

C. This Company is authorized to provide indemnification of agents (as defined in Section 317 of the CCC for breach of duty to the Company and its stockholders through bylaw provisions or through agreements with the agents, or through stockholder resolutions, or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the CCC, subject, at any time or times that the Company is subject to Section 2115 of the CCC, to the limits on such excess indemnification set forth in Section 204 of the CCC.

D. Any repeal or modification of this Article V shall be prospective and shall not affect the rights under this Article V in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

## VI.

For the management of the business and for the conduct of the affairs of the Company, and in further definition, limitation and regulation of the powers of the Company, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A. The management of the business and the conduct of the affairs of the Company shall be vested in its Board. The number of directors which shall constitute the whole Board shall be fixed by the Board in the manner provided in the Bylaws, subject to any restrictions which may be set forth in this Restated Certificate.

B. Subject to Section 2(b) of Article IV above, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Company. The stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Company; provided, however, that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by this Restated Certificate, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the Company.

C. The directors of the Company need not be elected by written ballot unless the Bylaws so provide.

D. This Company renounces any interest or expectancy of the Company in, or in being offered an opportunity to participate in, or in being informed about, an Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Company who is not an employee of the Company or any of its subsidiaries and is a partner or employee of an Institutional Investor (as defined below), or (ii) any Institutional Investor ("Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Company. For purposes of this Section D, Article VI, "Institutional Investor" shall mean any holder of Series Preferred of the Company and that is in the primary business of investing in private and public companies or any affiliate, partner, member, director, stockholder, employee, agent or other related person of any such holder, other than someone who is an employee of the Company or any of its subsidiaries.

**FOUR:** This Restated Certificate has been duly approved by the Board of Directors of the Company.

**FIVE:** This Restated Certificate was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the DGCL. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL by the stockholders of the Company.

**IN WITNESS WHEREOF**, Yadav Technology, Inc. has caused this Restated Certificate to be signed by its President and Chief Executive Officer this 18th day of December, 2009.

**YADAV TECHNOLOGY, INC.**

Signature: /s/Petro Estakhri

Print Name: Petro Estakhri

Title: President and Chief Executive Officer

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