

FILE

16-1670-GA-AGG

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July 26, 2016

Public Utilities Commission of Ohio  
Docketing Division  
180 East Broad Street  
Columbus, OH 43215-3793

Re: Competitive Retail Natural Gas Broker/Aggregator Application

To Whom It May Concern:

Please find enclosed AvidXchange, Inc.'s application to become a Natural Gas Broker in the state of Ohio. Per the filing instructions, please find one (1) original and three (3) copies of the application.

**Please be advised that AvidXchange is a privately held company and therefore holds its financial information in strict confidence. Accordingly, the financial information required for the application is marked "confidential" and provided in a separate envelope, also marked "confidential." It is being disclosed by AvidXchange as required by the state of Ohio solely for the purpose of the aforementioned application and submitted on the condition that the state of Ohio maintain its secrecy for the period of time permitted by applicable law and in any event for a minimum period of three (3) years. If for any reason the state of Ohio is unable to keep this information confidential, please contact AvidXchange as stated below.**

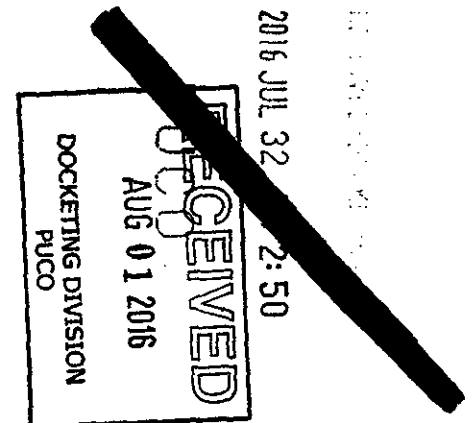
Should you have any questions or comments regarding this application, please do not hesitate to contact the undersigned at 980-498-1866 at your earliest convenience.

Thank you.

Regards,

A handwritten signature in black ink, appearing to read 'Timothy G. Hilton'.

Timothy G Hilton  
Compliance Project Manager



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Technician SM Date Processed AUG 01 2016



# Public Utilities Commission

PUCO USE ONLY - Version 1.07		
Date Received	Case Number	Certification Number
	16-1670- GA-AGG	

## CERTIFICATION APPLICATION COMPETITIVE RETAIL NATURAL GAS BROKERS /AGGREGATORS

Please **type or print** all required information. Identify all attachments with an exhibit label and title (*Example: Exhibit A-16 - Company History*). All attachments should bear the legal name of the Applicant. Applicants should file completed applications and all related correspondence with the Public Utilities Commission of Ohio, Docketing Division, 180 East Broad Street, Columbus, Ohio 43215-3793.

This PDF form is designed so that you may directly input information onto the form. You may also download the form by saving it to your local disk.

### SECTION A - APPLICANT INFORMATION AND SERVICES

#### A-1 Applicant intends to be certified as: (check all that apply)

☐ Retail Natural Gas Aggregator ☒ Retail Natural Gas Broker

#### A-2 Applicant information:

Legal Name AvidXchange, Inc.  
Address 1111 Metropolitan Avenue, Suite 650, Charlotte, NC 28204  
Telephone No. (888) 918-2843 Web site Address [www.avidxchange.com](http://www.avidxchange.com)

#### A-3 Applicant information under which applicant will do business in Ohio:

Name AvidXchange, Inc.  
Address 1111 Metropolitan Avenue, Suite 650, Charlotte, NC 28204  
Web site Address [www.avidxchange.com](http://www.avidxchange.com) Telephone No. (888) 918-2843

#### A-4 List all names under which the applicant does business in North America:

AvidXchange, Inc. Strongroom Solutions, Inc.  
AvidXchange Financial Services, Inc.  
Piracle, Inc.

#### A-5 Contact person for regulatory or emergency matters:

Name Timothy G. Hilton Title Compliance & Special Projects Manager  
Business Address 1111 Metropolitan Avenue, Suite 650, Charlotte, NC 28204  
Telephone No. (908) 498-1866 Fax No. (704) 971-8172 Email Address [thilton@avidxchange.com](mailto:thilton@avidxchange.com)

**A-6 Contact person for Commission Staff use in investigating customer complaints:**

Name Robert Macksoud Title Director - Energy Procurement & Rate Analysis  
Business address 1111 Metropolitan Avenue, Suite 650, Charlotte, NC 28204  
Telephone No. (800) 560-9305 Fax No. (704) 971-8172 Email Address rmacksoud@avidxchange.com

**A-7 Applicant's address and toll-free number for customer service and complaints**

Customer service address 1111 Metropolitan Avenue, Suite 650, Charlotte, NC 28204  
Toll-Free Telephone No. (800) 560-9305 Fax No. (704) 971-8172 Email Address rmacksoud@avidxchange.com

**A-8 Provide "Proof of an Ohio Office and Employee," in accordance with Section 4929.22 of the Ohio Revised Code, by listing name, Ohio office address, telephone number, and Web site address of the designated Ohio Employee**

Name CSC-Stephanie Durham Title Customer Service Representative  
Business address 50 West Broad Street Columbus, Ohio 43215  
Telephone No. 800.927.9800 x63415 Fax No. 302-636-5454 Email Address Stephanie.Durham@cscglobal.com

**A-9 Applicant's federal employer identification number 56-2193588**

**A-10 Applicant's form of ownership: (Check one)**

- |  |  |
|--|--|
| <input type="checkbox"/> Sole Proprietorship                 | <input type="checkbox"/> Partnership                     |
| <input type="checkbox"/> Limited Liability Partnership (LLP) | <input type="checkbox"/> Limited Liability Company (LLC) |
| <input checked="" type="checkbox"/> Corporation              | <input type="checkbox"/> Other                           |

**A-11 (Check all that apply) Identify each natural gas company service area in which the applicant is currently providing service or intends to provide service, including identification of each customer class that the applicant is currently serving or intends to serve, for example: *residential, small commercial, and/or large commercial/industrial (mercantile) customers*. (A mercantile customer, as defined in Section 4929.01(L)(1) of the Ohio Revised Code, means a customer that consumes, other than for residential use, more than 500,000 cubic feet of natural gas per year at a single location within the state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside of this state. In accordance with Section 4929.01(L)(2) of the Ohio Revised Code, "Mercantile customer" excludes a not-for-profit customer that consumes, other than for residential use, more than 500,000 cubic feet of natural gas per year at a single location within this state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside this state that has filed the necessary declaration with the Public Utilities Commission.)**

<input checked="" type="checkbox"/>	Columbia Gas of Ohio	<input type="checkbox"/>	Residential	<input checked="" type="checkbox"/>	Small Commercial	<input checked="" type="checkbox"/>	Large Commercial / Industrial
<input checked="" type="checkbox"/>	Dominion East Ohio	<input type="checkbox"/>	Residential	<input checked="" type="checkbox"/>	Small Commercial	<input checked="" type="checkbox"/>	Large Commercial / Industrial
<input checked="" type="checkbox"/>	Duke Energy Ohio	<input type="checkbox"/>	Residential	<input checked="" type="checkbox"/>	Small Commercial	<input checked="" type="checkbox"/>	Large Commercial / Industrial
<input checked="" type="checkbox"/>	Vectren Energy Delivery of Ohio	<input type="checkbox"/>	Residential	<input checked="" type="checkbox"/>	Small Commercial	<input checked="" type="checkbox"/>	Large Commercial / Industrial

**A-12 If applicant or an affiliated interest previously participated in any of Ohio's Natural Gas Choice Programs, for each service area and customer class, provide approximate start date(s) and/or end date(s) that the applicant began delivering and/or ended services.**

☐ Columbia Gas of Ohio

<input type="checkbox"/>	Residential	Beginning Date of Service	End Date
<input type="checkbox"/>	Small Commercial	Beginning Date of Service	End Date
<input type="checkbox"/>	Large Commercial	Beginning Date of Service	End Date
<input type="checkbox"/>	Industrial	Beginning Date of Service	End Date

☐ Dominion East Ohio

<input type="checkbox"/>	Residential	Beginning Date of Service	End Date
<input type="checkbox"/>	Small Commercial	Beginning Date of Service	End Date
<input type="checkbox"/>	Large Commercial	Beginning Date of Service	End Date
<input type="checkbox"/>	Industrial	Beginning Date of Service	End Date

☐ Duke Energy Ohio

<input type="checkbox"/>	Residential	Beginning Date of Service	End Date
<input type="checkbox"/>	Small Commercial	Beginning Date of Service	End Date
<input type="checkbox"/>	Large Commercial	Beginning Date of Service	End Date
<input type="checkbox"/>	Industrial	Beginning Date of Service	End Date

☐ Vectren Energy Delivery of Ohio

<input type="checkbox"/>	Residential	Beginning Date of Service	End Date
<input type="checkbox"/>	Small Commercial	Beginning Date of Service	End Date
<input type="checkbox"/>	Large Commercial	Beginning Date of Service	End Date
<input type="checkbox"/>	Industrial	Beginning Date of Service	End Date

**A-13 If not currently participating in any of Ohio's four Natural Gas Choice Programs, provide the approximate start date that the applicant proposes to begin delivering services:**

<input checked="" type="checkbox"/>	Columbia Gas of Ohio	Intended Start Date	Upon approval
<input checked="" type="checkbox"/>	Dominion East Ohio	Intended Start Date	Upon approval
<input checked="" type="checkbox"/>	Duke Energy Ohio	Intended Start Date	Upon approval
<input checked="" type="checkbox"/>	Vectren Energy Delivery of Ohio	Intended Start Date	Upon approval

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED.

- A-14 Exhibit A-14 "Principal Officers, Directors & Partners,"** provide the names, titles, addresses and telephone numbers of the applicant's principal officers, directors, partners, or other similar officials.
- A-15 Exhibit A-15 "Corporate Structure,"** provide a description of the applicant's corporate structure, including a graphical depiction of such structure, and a list of all affiliate and subsidiary companies that supply retail or wholesale natural gas or electricity to customers in North America.
- A-16 Exhibit A-16 "Company History,"** provide a concise description of the applicant's company history and principal business interests.
- A-17 Exhibit A-17 "Articles of Incorporation and Bylaws,"** if applicable, provide the articles of incorporation filed with the state or jurisdiction in which the applicant is incorporated and any amendments thereto.
- A-18 Exhibit A-18 "Secretary of State,"** provide evidence that the applicant is currently registered with the Ohio Secretary of the State.

## **SECTION B - APPLICANT MANAGERIAL CAPABILITY AND EXPERIENCE**

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED

- B-1 Exhibit B-1 "Jurisdictions of Operation,"** provide a current list of all jurisdictions in which the applicant or any affiliated interest of the applicant is, at the date of filing the application, certified, licensed, registered, or otherwise authorized to provide retail natural gas service, or retail/wholesale electric services.
- B-2 Exhibit B-2 "Experience & Plans,"** provide a current description of the applicant's experience and plan for contracting with customers, providing contracted services, providing billing statements, and responding to customer inquiries and complaints in accordance with Commission rules adopted pursuant to Section 4929.22 of the Revised Code and contained in Chapter 4901:1-29 of the Ohio Administrative Code.
- B-3 Exhibit B-3 "Summary of Experience,"** provide a concise and current summary of the applicant's experience in providing the service(s) for which it is seeking to be certified to provide (e.g., number and types of customers served, utility service areas, volume of gas supplied, etc.).
- B-4 Exhibit B-4 "Disclosure of Liabilities and Investigations,"** provide a description of all existing, pending or past rulings, judgments, contingent liabilities, revocations of authority, regulatory investigations, or any other matter that could adversely impact the applicant's financial or operational

status or ability to provide the services it is seeking to be certified to provide.

- B-5 Exhibit B-5 "Disclosure of Consumer Protection Violations,"** disclose whether the applicant, affiliate, predecessor of the applicant, or any principal officer of the applicant has been convicted or held liable for fraud or for violation of any consumer protection or antitrust laws within the past five years.

☒ No      ☐ Yes

If Yes, provide a separate attachment labeled as Exhibit B-5 "Disclosure of Consumer Protection Violations," detailing such violation(s) and providing all relevant documents.

- B-6 Exhibit B-6 "Disclosure of Certification Denial, Curtailment, Suspension, or Revocation,"** disclose whether the applicant or a predecessor of the applicant has had any certification, license, or application to provide retail natural gas or retail/wholesale electric service denied, curtailed, suspended, or revoked, or whether the applicant or predecessor has been terminated from any of Ohio's Natural Gas Choice programs, or been in default for failure to deliver natural gas.

☒ No      ☐ Yes

If Yes, provide a separate attachment, labeled as Exhibit B-6 "Disclosure of Certification Denial, Curtailment, Suspension, or Revocation," detailing such action(s) and providing all relevant documents.

## **SECTION C - APPLICANT FINANCIAL CAPABILITY AND EXPERIENCE**

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED

- C-1 Exhibit C-1 "Annual Reports,"** provide the two most recent Annual Reports to Shareholders. If applicant does not have annual reports, the applicant should provide similar information, labeled as Exhibit C-1, or indicate that Exhibit C-1 is not applicable and why.
- C-2 Exhibit C-2 "SEC Filings,"** provide the most recent 10-K/8-K Filings with the SEC. If applicant does not have such filings, it may submit those of its parent company. If the applicant does not have such filings, then the applicant may indicate in Exhibit C-2 whether the applicant is not required to file with the SEC and why.
- C-3 Exhibit C-3 "Financial Statements,"** provide copies of the applicant's two most recent years of audited financial statements (balance sheet, income statement, and cash flow statement). If audited financial statements are not available, provide officer-certified financial statements. If the applicant has not been in business long enough to satisfy this requirement, it shall file audited or officer-certified financial statements covering the life of the business.
- C-4 Exhibit C-4 "Financial Arrangements,"** provide copies of the applicant's current financial arrangements to conduct competitive retail natural gas service (CRNGS) as a business activity (e.g., guarantees, bank commitments, contractual arrangements, credit agreements, etc.)
- C-5 Exhibit C-5 "Forecasted Financial Statements,"** provide two years of forecasted financial statements (balance sheet, income statement, and cash flow statement) for the applicant's CRNGS operation, along with a list of assumptions, and the name, address, email address, and telephone number of the preparer.


- C-6 Exhibit C-6 "Credit Rating,"** provide a statement disclosing the applicant's current credit rating as reported by two of the following organizations: Duff & Phelps, Dun and Bradstreet Information Services, Fitch IBCA, Moody's Investors Service, Standard & Poors, or a similar organization. In instances where an applicant does not have its own credit ratings, it may substitute the credit ratings of a parent or affiliate organization, provided the applicant submits a statement signed by a principal officer of the applicant's parent or affiliate organization that guarantees the obligations of the applicant.
- C-7 Exhibit C-7 "Credit Report,"** provide a copy of the applicant's current credit report from Experian, Dun and Bradstreet, or a similar organization.
- C-8 Exhibit C-8 "Bankruptcy Information,"** provide a list and description of any reorganizations, protection from creditors, or any other form of bankruptcy filings made by the applicant, a parent or affiliate organization that guarantees the obligations of the applicant or any officer of the applicant in the current year or since applicant last filed for certification.
- C-9 Exhibit C-9 "Merger Information,"** provide a statement describing any dissolution or merger or acquisition of the applicant since applicant last filed for certification.

## **SECTION D – APPLICANT TECHNICAL CAPABILITY**

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED.

- D-1 Exhibit D-1 "Operations,"** provide a current written description of the operational nature of the applicant's business functions.
- D-2 Exhibit D-2 "Operations Expertise,"** given the operational nature of the applicant's business, provide evidence of the applicant's current experience and technical expertise in performing such operations.
- D-3 Exhibit D-3 "Key Technical Personnel,"** provide the names, titles, email addresses, telephone numbers, and background of key personnel involved in the operational aspects of the applicant's current business.

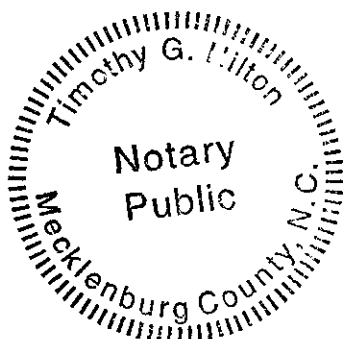
Applicant Signature and Title

 Director of Energy Procurement  
Bob MacIsaac

Sworn and subscribed before me this 26 day of July Month 2016 Year

  
Signature of official administering oath

Timothy G. Hilton, Notary  
Print Name and Title



My commission expires on

May 31, 2019



# The Public Utilities Commission of Ohio

Competitive Retail Natural Gas Service  
Affidavit Form  
(Version 1.07)

In the Matter of the Application of

AvidXchange, Inc.

for a Certificate or Renewal Certificate to Provide  
Competitive Retail Natural Gas Service in Ohio.

Case No.  -  -GA-AGG

County of  Mecklenburg

State of  North Carolina

Ross Agre

[Affiant], being duly sworn/affirmed, hereby states that:

- (1) The information provided within the certification or certification renewal application and supporting information is complete, true, and accurate to the best knowledge of affiant.
- (2) The applicant will timely file an annual report of its intrastate gross receipts and sales of hundred cubic feet of natural gas pursuant to Sections 4905.10(A), 4911.18(A), and 4929.23(B), Ohio Revised Code.
- (3) The applicant will timely pay any assessment made pursuant to Section 4905.10 or Section 4911.18(A), Ohio Revised Code.
- (4) Applicant will comply with all applicable rules and orders adopted by the Public Utilities Commission of Ohio pursuant to Title 49, Ohio Revised Code.
- (5) Applicant will cooperate with the Public Utilities Commission of Ohio and its staff in the investigation of any consumer complaint regarding any service offered or provided by the applicant.
- (6) Applicant will comply with Section 4929.21, Ohio Revised Code, regarding consent to the jurisdiction of the Ohio courts and the service of process.
- (7) Applicant will inform the Public Utilities Commission of Ohio of any material change to the information supplied in the certification or certification renewal application within 30 days of such material change, including any change in contact person for regulatory or emergency purposes or contact person for Staff use in investigating customer complaints.
- (8) Affiant further sayeth naught.

Affiant Signature & Title

Ross Agre, Chief Legal Officer

Sworn and subscribed before me this

26

day of

July

Month

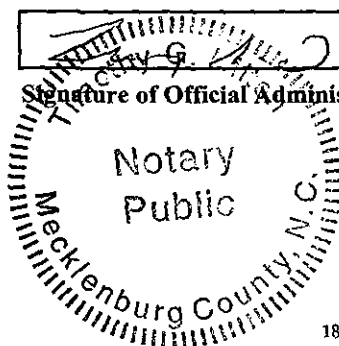
2016

Year

Signature of Official Administering Oath

Timothy C. Hilton, Notary

Print Name and Title



My commission expires on

May 31, 2019

(CRNGS Broker/Aggregator - Version 1.07) Page 7 of 7



# Exhibit A-14 “Principal Officers, Directors & Partners”

## AvidXchange, Inc.

AvidXchange’s principal officers are as follows:

Michael Praeger, Chief Executive Officer

Karen Bertaux, Chief Financial Officer and Treasurer

Ross Agre, Chief Legal Officer, Head of Compliance & Secretary

Address: 1111 Metropolitan Avenue, Suite 650, Charlotte, NC 28209; Phone: (704) 971-8160

## Exhibit A-15 “Corporate Structure”

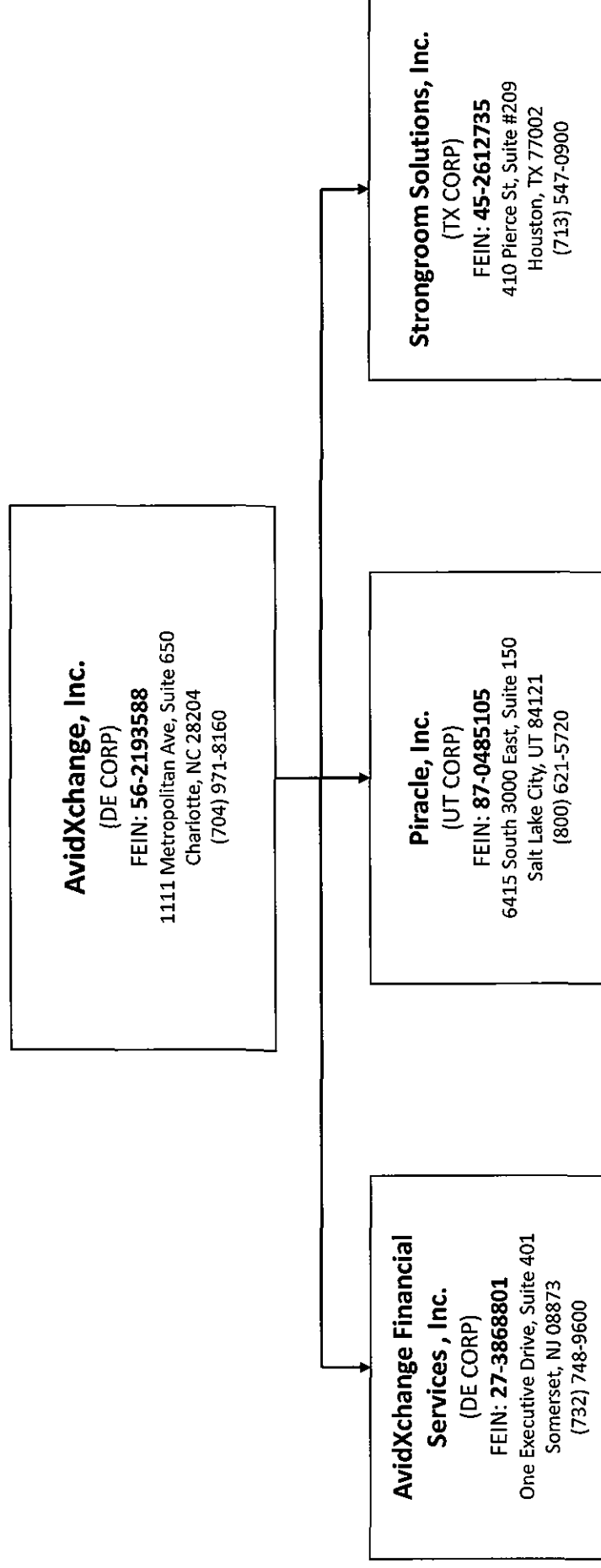
### AvidXchange, Inc.

See attached graphical depiction of AvidXchange’s corporate structure.

AvidXchange has **no** affiliates or subsidiaries companies that supply retail or wholesale electricity or natural gas to customers and companies that aggregate customers in North America.

# Corporate Organizational Chart

*Last updated 8/5/2015*



## Exhibit A-16 “Company History”

### AvidXchange, Inc.

AvidXchange, Inc. was founded by Michael Praeger in 2000. AvidXchange improves the way companies pay their bills by providing a solution that streamlines the Accounts Payable process – from invoice receipt through vendor payment. AvidXchange's solutions are SaaS based, which means that there is one platform for clients to login to for access to invoice and payment data.

In addition to its bill payment processes, for a small subset of its clients, AvidXchange audits and analyzes client invoices for any errors, overcharges, unfavorable pricing/terms or duplicate payments. As part of this service, AvidXchange negotiates its clients' third-party electricity and natural gas supply agreements.

# Exhibit A-17 “Articles of Incorporation & By-Laws”

AvidXchange, Inc.

Please see attached Articles of Incorporation and By-Laws of AvidXchange, Inc.

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "AVIDXCHANGE, INC.", FILED IN THIS OFFICE ON THE TWENTY-FIRST DAY OF JULY, A.D. 2015, AT 11:26 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

3211684 8100

151073063

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 2574420

DATE: 07-21-15

EXECUTION VERSION

**FIFTH AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
AVIDXCHANGE, INC.  
Pursuant to Sections 228, 242 and 245  
of the General Corporation Law of  
the State of Delaware**

AvidXchange, Inc., a corporation duly organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify as follows:

1. The name of the Corporation is AvidXchange, Inc.
2. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on April 12, 2000 under the name AvidXchange.com, Inc.
3. The following Fifth Amended and Restated Certificate of Incorporation restates and amends the provisions of the Certificate of Incorporation, as previously amended and restated, of this corporation and has been duly adopted by the Board of Directors and the stockholders of the corporation in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

\* \* \* \* \*

**ARTICLE I**

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

**ARTICLE II**

The address of the Corporation's registered office is 2711 Centerville Road, Suite 400, Wilmington, County of New Castle, Delaware, 19808. The name of its registered agent at such address is Corporation Service Company.

**ARTICLE III**

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

## ARTICLE IV

The total number of shares of stock which the Corporation shall have authority to issue is Fifty Nine Million Nine Hundred Thousand (59,900,000) shares, of which Thirty Eight Million Four Hundred Thousand (38,400,000) shares shall be Common Stock, \$0.001 par value per share (the "**Common**"), and Twenty One Million Five Hundred Thousand (21,500,000) shares shall be Preferred Stock, \$0.001 par value per share (the "**Preferred**"). Subject to paragraph IV.E(4)(d), the Preferred may be issued from time to time in one or more series. Subject to paragraph IV.E(4)(d), the Board of Directors of the Corporation is authorized from time to time to designate by resolution (a "**Series Resolution**"), one or more series of preferred stock in addition to the Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, Series E Preferred and Junior Series-1 Preferred designated in this Certificate of Incorporation, and the powers, preferences and rights, and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof as shall be permitted by Delaware law and this Certificate of Incorporation, and, subject to any requirements of this Certificate of Incorporation, to fix or alter the number of shares comprising any such series and the designation thereof.

The following is a statement of the designations and the powers, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation:

### A. Dividends.

The holders of the Preferred and the Common shall be entitled, when and if declared by the Board of Directors of the Corporation, consistent with Delaware law, to cash dividends and distributions out of funds of the Corporation legally available for that purpose. The Preferred shall have such dividend rights as designated on the Series Resolution or as hereinafter provided for the Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, Series E Preferred and Junior Series-1 Preferred.

Out of an abundance of caution, whenever in this Fifth Amended and Restated Certificate of Incorporation there is a reference to dividends, such reference shall only refer to dividends that were in fact declared and paid (or to be declared and paid) under Section 170 of the Delaware General Corporation Law or its successor, and shall not include some other event (such as a share redemption under Section 160 of the Delaware General Corporation Law or its successor) that is treated for tax purposes as receiving dividend treatment.

### B. Voting.

The holders of each share of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred shall be entitled to the number of votes equal to the number of shares of Common into which each share of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred could be converted on the record date for the vote or written consent of stockholders and, except as otherwise required by law, shall have voting rights and powers equal to the voting rights and powers of the Common. The holders of each share of Junior Series-1 Preferred shall be entitled to the number of votes equal



to 1/10<sup>th</sup> the number of shares of Common into which each share of Junior Series-1 Preferred could be converted on the record date for the vote or written consent of stockholders and otherwise, except as otherwise required by law, shall have voting rights and powers equal to the voting rights and powers of the Common. The holders of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, Series E Preferred and Junior Series-1 Preferred shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation and shall vote with holders of the Common upon all other matters submitted to a vote of stockholders, except those matters required to be submitted to a class or series vote pursuant to paragraph IV.D(4), paragraph IV.E(4), paragraph IV.F(4), or by law. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares of Common into which shares of Preferred held by each holder could be converted) shall be rounded to the nearest whole number (with one-half rounded upward to one). The number of authorized shares of Common may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred that may be required by the terms of this Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

**C. Liquidation Preference.**

**1. Preference.**

(a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of Series E Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common, Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and Junior Series-1 Preferred, by reason of their ownership thereof, an amount equal to the greater of (1) (x) the consideration per share paid for such Series E Preferred (\$17.96) (the "**Series E Price**"), minus (y) an amount equal to any dividends actually paid in respect of such Series E Preferred, or (2) the consideration that such holders would receive in the event that such holders converted the Series E Preferred into Common immediately prior to such liquidation, dissolution or winding up of the Corporation (the "**Series E Liquidation Preference**"). In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after payment of the Series E Liquidation Preference or any Preferred having a liquidation preference in priority to that of Series D Preferred, the holders of Series D Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common, Series A Preferred, Series B Preferred, Series C Preferred and Junior Series-1 Preferred, by reason of their ownership thereof, an amount equal to the greater of (1) (x) the consideration per share paid for such Series D Preferred (\$6.82), minus (y) an amount equal to any dividends actually paid in respect of such Series D Preferred, or (2) the consideration that such holders would receive in the event that such holders converted the Series D Preferred into Common immediately prior to such

liquidation, dissolution or winding up of the Corporation (the “**Series D Liquidation Preference**”). In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after payment of the Series E Liquidation Preference, the Series D Liquidation Preference or any Preferred having a liquidation preference in priority to that of Series B Preferred or Series C Preferred, the holders of Series B Preferred and Series C Preferred, *pari passu*, shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common, Series A Preferred and Junior Series-1 Preferred by reason of their ownership thereof, an amount equal to the greater of (1) (x) the consideration per share paid for such Series B Preferred (\$0.5220) or Series C Preferred (\$1.07549), as applicable, minus (y) an amount equal to any dividends actually paid in respect of such Series B Preferred or Series C Preferred, as the case may be, or (2) the consideration that such holders would receive in the event that such holders converted the Series B Preferred or Series C Preferred into Common immediately prior to such liquidation, dissolution or winding up of the Corporation (the “**Series B/C Liquidation Preference**”). In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after payment of the Series E Liquidation Preference, Series D Liquidation Preference, the Series B/C Liquidation Preference or any Preferred having a liquidation preference in priority to that of Series A Preferred, the holders of Series A Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common and Junior Series-1 Preferred by reason of their ownership thereof, an amount equal to the greater of (1) (x) the consideration per share paid for such Series A Preferred (\$2.00) minus (y) an amount equal to any dividends actually paid in respect of such Series A Preferred, or (2) the consideration that such holders would receive in the event that such holders converted the Series A Preferred into Common immediately prior to such liquidation, dissolution or winding up of the Corporation (the “**Series A Liquidation Preference**”). In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after payment of the Series E Liquidation Preference, the Series D Liquidation Preference, the Series B/C Liquidation Preference, the Series A Liquidation Preference or any Preferred having a liquidation preference in priority to that of Junior Series-1 Preferred, the holders of Junior Series-1 Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common by reason of their ownership thereof, an amount equal to the greater of (1) (x) the consideration per share paid for such Junior Series-1 Preferred (\$12.02) minus (y) an amount equal to any dividends actually paid in respect of such Junior Series-1 Preferred, or (2) the consideration that such holders would receive in the event that such holders converted the Junior Series-1 Preferred into Common immediately prior to such liquidation, dissolution or winding up of the Corporation (the “**Junior Series-1 Liquidation Preference**”). If, upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation are not sufficient to pay in full the amounts so payable to the holders of Series E Preferred, the holders of all shares of Series E Preferred shall participate in the distribution of all such assets in proportion to their respective liquidation preferences. If, upon any such liquidation, dissolution or winding up of the Corporation and payment in full of the Series E Liquidation Preference, the net assets of the Corporation are not

sufficient to pay in full the amounts so payable to the holders of Series D Preferred and any other series of Preferred having priority on liquidation *pari passu* to that of Series D Preferred, the holders of all shares of Series D Preferred and any other series of Preferred having priority on liquidation *pari passu* to that of Series D Preferred shall participate in the distribution of such assets in proportion to their respective liquidation preferences. If, upon any such liquidation, dissolution or winding up of the Corporation and payment in full of the Series E Liquidation Preference and the Series D Liquidation Preference, the net assets of the Corporation are not sufficient to pay in full the amounts so payable to the holders of Series B Preferred, Series C Preferred and any other series of Preferred having priority on liquidation *pari passu* to that of Series B Preferred and Series C Preferred, the holders of all shares of Series B Preferred, Series C Preferred and any other series of Preferred having priority on liquidation *pari passu* to that of Series B Preferred and Series C Preferred shall participate in the distribution of such assets in proportion to their respective liquidation preferences. If, upon any such liquidation, dissolution or winding up of the Corporation and payment in full of the Series E Liquidation Preference, the Series D Liquidation Preference and the Series B/C Liquidation Preference, the net assets of the Corporation are not sufficient to pay in full the amounts so payable to the holders of Series A Preferred and any other series of Preferred having priority on liquidation *pari passu* to that of Series A Preferred, the holders of all shares of Series A Preferred and any other series of Preferred having priority on liquidation *pari passu* to that of Series A Preferred shall participate in the distribution of such assets in proportion to their respective liquidation preferences. If, upon any such liquidation, dissolution or winding up of the Corporation and payment in full of the Series E Liquidation Preference, the Series D Liquidation Preference, the Series B/C Liquidation Preference and the Series A Liquidation Preference, the net assets of the Corporation are not sufficient to pay in full the amounts so payable to the holders of Junior Series-1 Preferred and any other series of Preferred having priority on liquidation *pari passu* to that of Junior Series-1 Preferred, the holders of all shares of Junior Series-1 Preferred and any other series of Preferred having priority on liquidation *pari passu* to that of Junior Series-1 Preferred shall participate in the distribution of such assets in proportion to their respective liquidation preferences.

(b) After the payment or the setting apart for payment to the holders of the Preferred of the preferential amounts so payable to them, if assets remain in the Corporation, the holders of the Common shall receive all of the remaining assets of the Corporation pro rata in accordance with the number of shares of Common held by them.

(c) All amounts per share set forth in this paragraph IV.C(1) shall be appropriately adjusted for any stock splits, stock combinations, stock dividends or similar recapitalizations.

2. Noncash Distributions. If any of the assets of the Corporation are to be distributed other than in cash under this paragraph IV.C or for any purpose, then the Board of Directors of the Corporation, including at least one Series E Director (as defined in the Investor Rights Agreement (as defined below)) shall promptly determine, in its

reasonable business judgment, the value of the assets to be distributed to the holders of Preferred or Common. The Corporation shall give prompt written notice to each holder of shares of the Preferred or Common of such valuation. If the assets of the Corporation to be distributed under this paragraph IV.C consist of cash and non-cash consideration, the portion of such assets consisting of cash consideration and the portion of such assets consisting of non-cash consideration, respectively, shall be allocated among the holders of capital stock of the Corporation eligible to receive such assets on a pro rata basis.

3. Significant Transaction. A consolidation or merger of the Corporation with or into any other entity or entities, a sale or transfer of shares of capital stock of the Corporation or its stockholders in a single transaction or a series of related transactions representing at least 50% of the of the voting power of the voting securities of the Corporation, a stock issuance or series of related stock issuances by the Corporation resulting in a change of ownership of more than 50% of the voting power of the voting securities of the Corporation (other than the issuance of Preferred in connection with a bona fide capital raising transaction approved in accordance with the terms hereof), or a sale of all or substantially all of the assets of the Corporation (a “**Significant Transaction**”), shall be deemed to be a liquidation, dissolution or winding up within the meaning of this paragraph IV.C; provided, however, that a “Significant Transaction” shall not include any consolidation, merger, sale or transfer of shares or stock issuance following which the holders of a majority or more of the capital stock of the resulting or surviving entity or the Corporation, as the case may be, based on voting power in the election of directors, are persons or entities who were stockholders of the Corporation immediately prior to such consolidation, merger, sale or transfer of shares or stock issuance.

4. Effecting a Significant Transaction.

(a) Purchase Agreement. The Corporation shall not have the power to effect any Significant Transaction unless the applicable purchase agreement with respect to such transaction (the “**Purchase Agreement**”) provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with this paragraph IV.C.

(b) Asset Sale. In the event of any Significant Transaction structured as an asset sale (including a sale of stock of any subsidiary of the Corporation that would constitute a Significant Transaction) (a “**Deemed Sale**”), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law of the State of Delaware within ninety (90) days after such Deemed Sale, then (i) the Corporation shall notify each holder of Preferred in writing of its rights under this paragraph IV.C(4)(b) and (ii) unless the holders of a majority of the then-outstanding shares of Preferred (which majority shall include the holders of a majority of the outstanding shares of Series E Preferred) elect otherwise by written notice sent to the Corporation not later than one hundred twenty (120) days after such Deemed Sale, the Corporation shall use the consideration received

by the Corporation for such Deemed Sale, together with any other assets of the Corporation available for distribution to its stockholders, all to the extent permitted by Delaware law governing distributions to stockholders (the “**Available Proceeds**”), on the one hundred fiftieth (150<sup>th</sup>) day after such Deemed Sale, to redeem all outstanding shares of Preferred at a price per share equal to the Series E Liquidation Preference (with respect to the Series E Preferred), Series D Liquidation Preference (with respect to the Series D Preferred), Series B/C Liquidation Preference (with respect to the Series C Preferred or the Series B Preferred), Series A Liquidation Preference (with respect to the Series A Preferred) or the Junior Series-1 Liquidation Preference (with respect to the Junior Series-1 Preferred), as the case may be, with any amounts remaining to be provided to the holders of Common on a pro rata basis. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Series E Preferred, the Corporation shall ratably redeem each holder’s shares of Series E Preferred to the fullest extent of such Available Proceeds, and shall redeem the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. All shares of Preferred once redeemed pursuant to the provisions of this paragraph IV.C(4)(b) herein will be cancelled immediately upon such redemption with no further rights herein. Prior to the distribution or redemption provided for in this paragraph IV.C(4)(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Sale, except to discharge expenses incurred in connection with such Deemed Sale.

(c) Allocation of Proceeds. In the event of a Significant Transaction, if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the “**Additional Consideration**”), the Purchase Agreement shall provide that (i) the portion of such consideration that is not Additional Consideration (such portion, the “**Initial Consideration**”) shall be allocated among the holders of capital stock of the Corporation in accordance with paragraph IV.C(1) as if the Initial Consideration were the only consideration payable in connection with such Significant Transaction; and (ii) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with paragraph IV.C(1) after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this paragraph IV.C(4)(c), consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Significant Transaction shall be deemed to be Additional Consideration.

#### **D. Terms of Series A Preferred.**

There is hereby created a series of Two Million (2,000,000) shares of Preferred designated “Series A Convertible Preferred” (the “**Series A Preferred**”) having the following

powers, preferences and relative participating, optional or other special rights and qualifications, limitations or restrictions thereof in addition to those otherwise specified in this Certificate of Incorporation.

1. Series A Dividends. Subject to paragraph IV.E(1), no dividend or distribution of cash, capital stock or otherwise shall be declared or paid on the Common unless prior to or simultaneously with such declaration, a dividend or distribution is declared and paid on each share of Series A Preferred in an amount equal to or greater than the amount that would have been received by the holders of the Series A Preferred had such holders, on the record date for the Common dividend or distribution, held the number of shares of Common into which the Series A Preferred would have been convertible upon conversion hereunder.

2. Series A Conversion.

The Series A Preferred shall be convertible into Common, as follows:

(a) Right to Convert. Each share of Series A Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, into the number of shares of Common which results from dividing the Series A Conversion Price (as defined below) per share in effect at the time of conversion into the “**Series A Conversion Value**” per share. The number of shares of Common into which a share of Series A Preferred is convertible is hereinafter referred to as the “**Series A Conversion Rate**.” As of the Effective Date, the Series A Conversion Value is \$2.00 per share, the Series A Conversion Price per share of Series A Preferred (the “**Series A Conversion Price**”) is \$1.19, and the Series A Conversion Rate is 1.6806. The Series A Conversion Price shall be subject to adjustment as hereinafter provided.

(b) Automatic Conversion. Each share of Series A Preferred shall automatically be converted into shares of Common at the then effective Series A Conversion Rate immediately prior to the closing of a public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering a firm commitment underwritten offering of the Common with aggregate gross proceeds to the Corporation, at the public offering price, of at least \$50,000,000, and a minimum equity valuation of the Corporation of at least the sum of (i) \$780,000,000, minus (ii) an amount equal to any dividends actually paid in respect of such Series E Preferred, minus (iii) any amounts actually paid to holders of shares of Series E Preferred to redeem shares of Series E Preferred (a “**Qualified Offering**”).

(c) Mechanics of Conversion. Before any holder of Series A Preferred shall be entitled to convert the same into shares of Common as provided in paragraph IV.D(2)(a), he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation and shall give written notice to the Corporation at such office that he elects to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred a certificate or certificates for the number of shares of Common to which he shall be

entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred to be converted, and the person or persons entitled to receive the shares of Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common on such date.

In the event of an automatic conversion pursuant to paragraph IV.D(2)(b), the outstanding shares of Series A 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 Corporation; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common issuable upon such automatic conversion unless the certificates evidencing such shares of Series A Preferred are either delivered to the Corporation as provided above, or the holder notifies the Corporation that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder of Series A Preferred, a certificate or certificates for the number of shares of Common to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common. Such conversion shall be deemed to have been made immediately prior to and shall be contingent upon the closing of a Qualified Offering, and the person or persons entitled to receive the shares of Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common on such date.

(d) Fractional Shares. No fractional shares of Common shall be issued upon conversion of the Series A Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the Series A Conversion Price.

(e) Adjustment of Series A Conversion Price. The Series A Conversion Price shall be subject to adjustment from time to time as follows:

(i) If the number of shares of Common outstanding at any time after the date hereof is increased by a stock dividend payable in shares of Common or by a subdivision or split-up of shares of Common, then, on the date such payment is made or such change is effective, the Series A Conversion Price shall be appropriately decreased so that the number of shares of Common issuable on conversion of the Series A Preferred shall be increased in proportion to such increase of outstanding shares.

(ii) If the number of shares of Common outstanding at any time after the date hereof is decreased by a combination of the outstanding shares of Common, then, on the effective date of such combination, the Series A Conversion Price shall be appropriately increased so that the number of shares of Common issuable on conversion

of the Series A Preferred shall be decreased in proportion to such decrease in outstanding shares.

(iii) In case, at any time after the date hereof, of any capital reorganization, or any reclassification of the stock of the Corporation (other than a change in par value or as a result of a stock dividend or subdivision, split-up or combination of shares), or the consolidation or merger of the Corporation with or into another person (other than a consolidation or merger in which the Corporation is the continuing entity and which does not result in any change in the Common), or of the sale or other disposition of all or substantially all the properties and assets of the Corporation as an entirety to any other person, the shares of Series A Preferred shall, if such event is not deemed a liquidation for purposes of paragraph IV.C(3), after such reorganization, reclassification, consolidation, merger, sale or other disposition, be convertible into the kind and number of shares of stock or other securities or property of the Corporation or of the entity resulting from such consolidation or surviving such merger or to which such properties and assets shall have been sold or otherwise disposed to which such holder would have been entitled if immediately prior to such reorganization, reclassification, consolidation, merger, sale or other disposition he had converted his shares of Series A Preferred into Common. The provisions of this paragraph IV.D(2)(e)(iii) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or other dispositions.

(iv) All calculations under this paragraph IV.D(2)(e) shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(f) Minimal Adjustments. No adjustment in a Series A Conversion Price need be made if such adjustment would result in a change in a Series A Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in a Series A Conversion Price.

(g) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of a Series A Conversion Price pursuant to paragraph IV.D(2)(e), the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon written request at any time of any holder of Series A Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series A Conversion Price at the time in effect for the Series A Preferred held, and (iii) the number of shares of Common and the amount if any, of other property which at the time would be received upon the conversion of the Series A Preferred.



(h) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, the Corporation shall mail to each holder of Series A Preferred at least twenty (20) days prior to the date specified herein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution.

(i) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common solely for the purpose of effecting the conversion of the shares of the Series A Preferred such number of its shares of Common as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred; and if at any time the number of authorized but unissued shares of Common shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common to such number of shares as shall be sufficient for such purpose.

(j) Notices. Any notice required by the provisions of this Certificate of Incorporation to be given to the holder of shares of the Series A Preferred shall be deemed given if (i) mailed, postage prepaid, and addressed to each holder of record at his latest address appearing on the books of the Corporation or (ii) given by email or other form of "electronic transmission" (as such term is defined in Section 232(c) of the Delaware General Corporation Law) in compliance with the provisions of the Delaware General Corporation Law and the Investor Rights Agreement (as defined below).

(k) Action. The Corporation will not, by amendment of its charter documents or through any reorganization, recapitalization, consolidation, merger, dissolution, issue or sale of securities or take any other action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this paragraph IV.D(2) by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this paragraph IV.D(2) and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred Stock against impairment.

### 3. Redemption of Series A Preferred.

(a) On or after the date that is seven years from the Effective Date (the "**Redemption Date**"), any holder of Series A Preferred may provide a written request to the Corporation (a "**Series A Redemption Notice**") to redeem any or all of the Series A of such holder at an amount equal to (i) the consideration per share paid for such Series A Preferred, minus (ii) any amounts previously distributed to such holder for such shares from declared and paid dividends, redemptions (whether voluntary or mandatory) or otherwise. The Corporation shall, upon each of the six month, twelve-month and eighteen month anniversary of its receipt of a Series A Redemption Notice, redeem for cash 1/3 of the shares of Series A Preferred set forth in the Series A Redemption Notice. Notwithstanding the foregoing, if the Corporation is in receipt of a Series E Redemption

Notice at any time when it has unpaid amounts to a holder of Series A Preferred that has submitted a Series A Redemption Notice, the Corporation shall subordinate its payment obligations to the holders of Series A Preferred to its payment obligations to the holders of Series E Preferred until the Board of Directors makes a determination that adequate provision has been made to redeem the Series E Shares subject to the Series E Redemption Notice on a full and timely basis. If the Corporation fails to timely redeem the Series A Preferred as set forth herein on any specified payment date, then the amount payable in respect of the Series A Preferred as set forth herein shall be increased at the rate of 5.0% per annum, compounding quarterly, for the first twelve months from such specified payment date, and afterwards at a rate of 8.0% per annum, compounding quarterly, until such amount (including interest) shall be paid in full; provided, however, that no such interest shall accrue while the Corporation's payment obligations to the holders of Series A Preferred are subordinated in accordance with the terms of this paragraph.

(b) Any Series A Redemption Notice shall be sent by first class certified mail, return receipt requested, postage prepaid, to the Corporation at its then current address, with a copy of any notice or other communication sent by electronic mail.

(c) Once redeemed pursuant to the provisions of this paragraph IV.D(3), shares of Series A Preferred shall be cancelled and not subject to reissuance.

#### 4. Series A Protective Provisions.

So long as any of the Series A Preferred shall be outstanding, the Corporation shall not without obtaining the approval (by vote or written consent, as provided by law) of the holders of not less than a majority of the outstanding shares of Series A Preferred:

(a) Change of Rights. Materially and adversely alter or change the rights, preferences or privileges of the Series A Preferred; provided however, that the following actions shall not be deemed to materially and adversely alter or change the rights, preferences or privileges of the Series A Preferred and therefore shall not require the approval of the Series A Preferred voting as a class: (i) increasing the number of Series A Preferred authorized, (ii) creating any new class or series of shares having preferences over any outstanding shares of Preferred as to dividends or assets, or authorize or issue shares of stock of any class or series or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any shares of stock of this Corporation other than stock junior in preference and priority as to dividends and assets, (iii) merging or consolidating with, or permitting any of its subsidiaries to merge or consolidate with, any entity, or (iv) selling, leasing, licensing or otherwise disposing of, or permitting any such subsidiary to sell, lease, license or otherwise dispose of, all or substantially all of the consolidated assets of the Corporation in any twelve-month period; or

(b) Reclassification. Reclassify any class or series of any Securities into shares having any preference or priority as to liquidation preference, redemption,

dividends or assets or as to any other rights, powers, preferences or privileges senior to or on a parity with any such preference or priority of the Series A Preferred.

5. Future Financings.

(a) Preemptive Right. The Corporation grants to each holder of at least 50,000 shares of Series A Preferred (each, a “**Major Series A Holder**”) a preemptive right to purchase such Major Series A Holder’s pro-rata share, as defined below, of any Securities (as defined below). Such Major Series A Holder’s “**pro-rata share**” shall be that portion of the Securities proposed to be issued which bears the same relation to all of the Securities proposed to be issued as the shares of Series A Preferred held by such Major Series A Holder (on an as-converted basis) bear to all outstanding shares of the Common (assuming for the purposes of such calculation the conversion of all outstanding securities which are convertible into Common without payment of additional consideration, including those held by the Major Series A Holder), all determined immediately prior to the offering of the Securities. The preemptive right in this paragraph IV.D(5)(a) shall be combined, if applicable, with that preemptive right set forth in paragraph IV.E(5)(a) if such Major Series A Holder also is a Series B/C/D/E Holder such that, pursuant to this paragraph IV.D(5)(a), the Major Series A Holder will receive a preemptive right for its pro rata share based on its Series A Preferred ownership and, pursuant to paragraph IV.E(5)(a), its pro rata share based on its ownership of Series B Preferred, Series C Preferred, Series D Preferred and/or Series E Preferred.

(b) Notice. In the event that the Corporation proposes to undertake an issue of Securities, it shall deliver to each Major Series A Holder written notice of its intention, describing such Securities, specifying each Major Series A Holder’s pro-rata share and stating the purchase price and other terms upon which it proposes to issue the same (the “**Series A Option Notice**”). For a period of twenty (20) days following the receipt of the Series A Option Notice, each Major Series A Holder shall have the right to elect, by written notice to the Corporation, to purchase all or any portion of such Major Series A Holder’s pro-rata share of the Securities described in the Series A Option Notice. The closing of any sale pursuant to this paragraph IV.D(5)(b) shall occur within ninety (90) days of the date that the Series A Option Notice is given.

(c) Sale by the Corporation. In the event any Major Series A Holder fails to exercise its preemptive rights within the specified period, or any Major Series A Holder elects to acquire less than its aggregate pro-rata shares pursuant to the exercise of such right, then, during the 90 day period following the expiration of the periods set forth in paragraph IV.D(5)(b), the Corporation may sell, free of any preemptive right on such Major Series A Holder’s part, the portion of such Major Series A Holder’s pro-rata shares not purchased pursuant to such preemptive right, upon the same terms specified in the Series A Option Notice. If the Corporation does not enter into an agreement for the sale of the Securities within such period, or if such agreement is not consummated within thirty (30) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such Securities shall not be offered unless first reoffered to the Major Series A Holders in accordance with this paragraph IV.D(5).

(d) Exceptions. The preemptive right granted under this Paragraph IV.D(5) shall not apply to (i) the Excluded Stock (as defined below) or (ii) Securities issued for non-cash consideration, or as a so-called "equity feature" (such as a warrant) of a transaction primarily involving debt securities or indebtedness for borrowed money, or pursuant to a merger or acquisition transaction, in each case, approved by the Board of Directors (including the Series E Director).

**E. Terms of Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred.**

There is hereby created (a) a series of Five Million (5,000,000) shares of Preferred designated "Series B Convertible Preferred" (the "**Series B Preferred**"), (b) a series of Four Million Two Hundred Thousand (4,200,000) shares of Preferred designated "Series C Convertible Preferred" (the "**Series C Preferred**"), (c) a series of One Million Five Hundred Thousand (1,500,000) shares of Preferred designated "Series D Convertible Preferred" (the "**Series D Preferred**"), and (d) a series of Eight Million Four Hundred Thousand (8,400,000) shares of Preferred designated "Series E Convertible Preferred" (the "**Series E Preferred**"), each having the following powers, preferences and relative participating, optional or other special rights and qualifications, limitations or restrictions thereof in addition to those otherwise specified in this Certificate of Incorporation.

1. Series B, Series C, Series D and Series E Dividends.

(a) No dividend or distribution of cash, capital stock or otherwise shall be declared or paid on any shares of capital stock of the Corporation unless prior to or simultaneously with such declaration, a dividend or distribution is declared and paid on each share Series E Preferred in an amount equal to or greater than the amount that would have been received by the holders of the Series E Preferred had such holders, on the record date for the such dividend or distribution, held the number of shares of Common into which the Series E Preferred would have been convertible upon conversion hereunder.

(b) Subject to paragraph IV.E(1)(a), no dividend or distribution of cash, capital stock or otherwise shall be declared or paid on the Common or Series A Preferred unless prior to or simultaneously with such declaration, a dividend or distribution is declared and paid on each share of Series B Preferred, Series C Preferred, and Series D Preferred in an amount equal to or greater than the amount that would have been received by the holders of the Series B Preferred, the holders of the Series C Preferred, and the holders of Series D Preferred had such holders, on the record date for the Common dividend or distribution, held the number of shares of Common into which the Series B Preferred, Series C Preferred, and Series D Preferred would have been convertible upon conversion hereunder.

2. Series B, Series C, Series D and Series E Conversion.

The Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred shall be convertible into Common, as follows:

(a) Right to Convert. Each share of Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation.

(i) Each share of Series B Preferred shall be convertible into the number of shares of Common which results from dividing the Series B Conversion Price (as defined below) per share in effect at the time of conversion into the "**Series B Conversion Value**" per share. The number of shares of Common into which a share of Series B Preferred is convertible is hereinafter referred to as the "**Series B Conversion Rate**." As of the Effective Date, both the Series B Conversion Price per share of Series B Preferred (the "**Series B Conversion Price**") and the Series B Conversion Value are \$0.5220. The Series B Conversion Price shall be subject to adjustment as hereinafter provided.

(ii) Each share of Series C Preferred shall be convertible into the number of shares of Common which results from dividing the Series C Conversion Price (as defined below) per share in effect at the time of conversion into the "**Series C Conversion Value**" per share. The number of shares of Common into which a share of Series C Preferred is convertible is hereinafter referred to as the "**Series C Conversion Rate**." As of the Effective Date, both the Series C Conversion Price per share of Series C Preferred (the "**Series C Conversion Price**") and the Series C Conversion Value are \$1.07549. The Series C Conversion Price shall be subject to adjustment as hereinafter provided.

(iii) Each share of Series D Preferred shall be convertible into the number of shares of Common which results from dividing the Series D Conversion Price (as defined below) per share in effect at the time of conversion into the "**Series D Conversion Value**" per share. The number of shares of Common into which a share of Series D Preferred is convertible is hereinafter referred to as the "**Series D Conversion Rate**." As of the Effective Date, both the Series D Conversion Price per share of Series D Preferred (the "**Series D Conversion Price**") and the Series D Conversion Value are \$6.82. The Series D Conversion Price shall be subject to adjustment as hereinafter provided.

(iv) Each share of Series E Preferred shall be convertible into the number of shares of Common which results from dividing the Series E Conversion Price (as defined below) per share in effect at the time of conversion into the "**Series E Conversion Value**" per share. The number of shares of Common into which a share of Series E Preferred is convertible is hereinafter referred to as the "**Series E Conversion Rate**." As of the Effective Date, both the Series E Conversion Price per share of Series E Preferred (the "**Series E Conversion Price**") and the Series E Conversion Value are

\$17.96. The Series E Conversion Price shall be subject to adjustment as hereinafter provided.

(b) Automatic Conversion. Each share of Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred shall automatically be converted into shares of Common at the then effective Series B Conversion Rate, Series C Conversion Rate, Series D Conversion Rate or Series E Conversion Rate, as applicable, immediately prior to the closing of a Qualified Offering.

(c) Mechanics of Conversion. Before any holder of Series B Preferred, Series C Preferred, Series D Preferred or Series E Preferred shall be entitled to convert the same into shares of Common as provided in paragraph IV.E(2)(a), he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation and shall give written notice to the Corporation at such office that he elects to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series B Preferred, Series C Preferred, Series D Preferred or Series E Preferred a certificate or certificates for the number of shares of Common to which he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series B Preferred, Series C Preferred, Series D Preferred or Series E Preferred to be converted, and the person or persons entitled to receive the shares of Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common on such date.

In the event of an automatic conversion pursuant to paragraph IV.E(2)(b), the outstanding shares of Series B Preferred, Series C Preferred, Series D Preferred and Series E 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 Corporation; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common issuable upon such automatic conversion unless the certificates evidencing such shares of Series B Preferred, Series C Preferred, Series D Preferred or Series E Preferred are either delivered to the Corporation as provided above, or the holder notifies the Corporation that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder of Series B Preferred, Series C Preferred, Series D Preferred or Series E Preferred, a certificate or certificates for the number of shares of Common to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common. Such conversion shall be deemed to have been made immediately prior to and shall be contingent upon the closing of a Qualified Offering, and the person or persons entitled to receive the shares of Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common on such date.

(d) Fractional Shares. No fractional shares of Common shall be issued upon conversion of the Series B Preferred, Series C Preferred, Series D Preferred or Series E Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price, as applicable.

(e) Adjustment of Series B Conversion Price, Series C Conversion Price, Series D Conversion Price and Series E Conversion Price. The Series B Conversion Price, the Series C Conversion Price, the Series D Conversion Price and Series E Conversion Price shall be subject to adjustment from time to time as follows:

(i) If the Corporation shall issue any Common (other than Excluded Stock or stock dividends, subdivisions, split-ups, combinations or dividends, which such events are covered by paragraphs IV.E(2)(e)(ii-v)) ("**Additional Common Shares**") or other securities of the Corporation directly or indirectly convertible into or exchangeable for Common (other than "Excluded Stock") and (A) if the consideration price per share, on an as-converted basis, is less than the Series B Conversion Price as in effect immediately prior to the issuance of such Additional Common Shares (including other securities directly or indirectly convertible into or exchangeable for Common (other than Excluded Stock)), then and in such event, such Series B Conversion Price shall be decreased to such purchase price per share; (B) if the consideration price per share, on an as-converted basis, is less than the Series C Conversion Price as in effect immediately prior to the issuance of such Additional Common Shares (including other securities directly or indirectly convertible into or exchangeable for Common (other than Excluded Stock)), then and in such event, such Series C Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula; (C) if the consideration price per share, on an as-converted basis, is less than the Series D Conversion Price as in effect immediately prior to the issuance of such Additional Common Shares (including other securities directly or indirectly convertible into or exchangeable for Common (other than Excluded Stock)), then and in such event, such Series D Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula and (D) if the consideration price per share, on an as-converted basis, is less than the Series E Conversion Price as in effect immediately prior to the issuance of such Additional Common Shares (including other securities directly or indirectly convertible into or exchangeable for Common (other than Excluded Stock)), then and in such event, such Series E Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP2 = CP1 * (A + B) / (A + C)$$

For purposes of the foregoing formula, the following definitions shall apply:

**“CP2”** shall mean the Series C Conversion Price (with respect to Series C Preferred), Series D Conversion Price (with respect to Series D Preferred) or Series E Conversion Price (with respect to Series E Preferred) in effect immediately after such issue of Additional Common Shares (or other securities of the Corporation directly or indirectly convertible into or exchangeable for Common);

**“CP1”** shall mean the Series C Conversion Price (with respect to Series C Preferred), Series D Conversion Price (with respect to Series D Preferred) or Series E Conversion Price (with respect to Series E Preferred) in effect immediately prior to such issue of Additional Common Shares (or other securities of the Corporation directly or indirectly convertible into or exchangeable for Common);

**“A”** shall mean the number of shares of Common outstanding and deemed outstanding immediately prior to such issue of Additional Common Shares (treating for this purpose as outstanding all shares of Common issuable upon exercise or conversion of securities directly or indirectly convertible into or exchangeable for Common outstanding immediately prior to such issue);

**“B”** shall mean the number of shares of Common that would have been issued if such Additional Common Shares (or other securities of the Corporation directly or indirectly convertible into or exchangeable for Common) had been issued at a price per share equal to CP1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP1); and

**“C”** shall mean the number of such Additional Common Shares (or other securities of the Corporation directly or indirectly convertible into or exchangeable for Common) issued in such transaction.

For the purposes of this paragraph IV.E(2)(e), the following provisions shall also be applicable:

(1) In the case of the issuance of Common for cash, the consideration received therefor shall be deemed to be the amount of cash paid therefor without deducting any discounts or commissions paid or incurred by the Corporation in connection with the issuance and sale thereof;

(2) In the case of the issuance of Common for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors of the Corporation;

(3) In the case of the issuance of (i) options to purchase or rights to subscribe for Common (other than Excluded Stock), (ii) securities by their terms convertible or exchangeable for Common (other than Excluded Stock), or (iii) options to purchase or rights to subscribe for such convertible or exchangeable securities:

(v) the aggregate maximum number of shares of Common deliverable upon exercise of such options to purchase or



rights to subscribe for Common shall be deemed to be issuable for a consideration equal to the consideration (determined in the manner provided in subdivisions (1) and (2) above), if any, received by the Corporation upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common covered thereby;

(w) the aggregate maximum number of shares of Common deliverable upon conversion of or in exchange for any such convertible or exchangeable securities, or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof, shall be deemed to be issuable for a consideration equal to the consideration received by the Corporation for any such securities and related options or rights, plus the additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subdivisions (1) and (2) above);

(x) the aggregate maximum number of shares of Common deliverable upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof, shall be deemed to have been issued at the time such options or rights or securities were issued;

(y) any change in the number of shares of Common deliverable upon exercise of any such options or rights or conversion of or exchange for such convertible or exchangeable securities, or on any change in the minimum purchase price of such options, rights or securities, the Series B Conversion Price, the Series C Conversion Price, the Series D Conversion Price and/or the Series E Conversion Price, as applicable, shall forthwith be readjusted to such Series B Conversion Price, Series C Conversion Price, the Series D Conversion Price and/or the Series E Conversion Price, as applicable, as would have obtained had the adjustment (and any subsequent adjustments) made upon (x) the issuance of such options, rights or securities not exercised, converted or exchanged prior to such change, as the case may be, been made upon the basis of such change or (y) the options or rights related to such securities not converted or exchanged prior to such change, as the case may be, been made upon the basis of such change; and

(z) on the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Series B Conversion Price, the Series C Conversion Price, the Series D Conversion Price and/or the Series E Conversion Price, as applicable, shall forthwith be readjusted to such Series B Conversion Price, Series C Conversion Price, the Series D Conversion Price and/or the Series E Conversion Price, as applicable, as would have obtained had the adjustment (and any subsequent adjustments) made upon the issuance of such options, rights, convertible or exchangeable securities or options or rights related to such convertible or exchangeable securities, as the case may be, been made upon the basis of the issuance of only the number of shares of Common actually issued upon the exercise of such options or rights, upon the conversion or exchange of such convertible or exchangeable securities or upon the exercise of the options or rights related to such convertible or exchangeable securities, as the case may be.

(ii) **"Excluded Stock"** shall mean:

(1) all shares of Common issued or issuable upon the conversion of the shares of the Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, Series E Preferred or Junior Series-I Preferred;

(2) up to 1,079,800 shares of Common issued or issuable upon exercise of options or other purchase rights granted under the Corporation's 2000 or 2010 Stock Option Plan to employees, officers, directors, or consultants of the Corporation and approved by the Board of Directors of the Corporation or a committee of the Board;

(3) all shares of Common or other securities (including options, warrants and other purchase rights) issued or to be issued to employees, officers, directors, consultants, affiliates or lenders of the Corporation after receipt of written consent to such issuance from the holders of more than 60% of the then-outstanding Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred, voting together as a single class, and approval of such issuance by the Board of Directors of the Corporation (including the Series E Director);

(4) Securities issued upon conversion or exercise of warrants issued by the Corporation outstanding as of the date hereof or to be issued, if Square 1 Bank exercises its option, pursuant to Section 2.5(c) of the Line of Credit (as defined herein) and disclosed to the holders of Series E Preferred prior to the Effective Date;

(5) up to 8,100,000 shares of Series E Preferred issued pursuant to that certain Series E Stock Purchase Agreement between the Corporation and the purchasers and any subsequent purchasers and dated as of July 2, 2015, and as may be amended from time to time (the “2015 Series E Purchase Agreement”);

(6) Series E Preferred to be issued, at the Corporation’s election, in connection with the conversion of a subordinated convertible note in the original principal amount of \$5.0 million issued to SSI Legacy, LLC;

(7) Securities to be issued, if any, pursuant to Article III of that certain Earnout Agreement, dated as of June 16, 2015, by and between the Corporation and SSI Legacy, LLC; and

(8) Securities issued pursuant to warrant agreements to purchasers of Series E Preferred to the extent such purchasers are providing advisory services to the Company at the time of such issuance; provided, however, that such issuance shall not exceed 65,000 shares of Securities per year.

Shares of Excluded Stock described in subdivision (2) of paragraph IV.E(2)(e)(1) shall not be deemed to be outstanding for purposes of the computations of paragraph IV.E(2) above until actually issued.

(iii) If the number of shares of Common outstanding at any time after the date hereof is increased by a stock dividend payable in shares of Common or by a subdivision or split-up of shares of Common, then, on the date such payment is made or such change is effective, the Series B Conversion Price, Series C Conversion Price, Series D Conversion Price and Series E Conversion Price shall each be appropriately decreased so that the number of shares of Common issuable on conversion of the Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred shall be increased in proportion to such increase of outstanding shares.

(iv) If the number of shares of Common outstanding at any time after the date hereof is decreased by a combination of the outstanding shares of Common, then, on the effective date of such combination, the Series B Conversion Price, Series C Conversion Price, Series D Conversion Price and Series E Conversion Price shall each be appropriately increased so that the number of shares of Common issuable on conversion of the Series B Preferred, Series C Preferred, Series D Preferred or Series E Preferred shall be decreased in proportion to such decrease in outstanding shares.

(v) In case, at any time after the date hereof, of any capital reorganization, or any reclassification of the stock of the Corporation (other than a change in par value or as a result of a stock dividend or subdivision, split-up or

combination of shares), or the consolidation or merger of the Corporation with or into another person (other than a consolidation or merger in which the Corporation is the continuing entity and which does not result in any change in the Common), or of the sale or other disposition of all or substantially all the properties and assets of the Corporation as an entirety to any other person, the shares of Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred shall, if such event is not deemed a liquidation for purposes of paragraph IV.C(3), after such reorganization, reclassification, consolidation, merger, sale or other disposition, be convertible into the kind and number of shares of stock or other securities or property of the Corporation or of the entity resulting from such consolidation or surviving such merger or to which such properties and assets shall have been sold or otherwise disposed to which such holder would have been entitled if immediately prior to such reorganization, reclassification, consolidation, merger, sale or other disposition he had converted his shares of Series B Preferred, Series C Preferred, Series D Preferred or Series E Preferred into Common. The provisions of this paragraph IV.E(2)(e)(v) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or other dispositions.

(vi) All calculations under this paragraph IV.E(2)(e) shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(f) Minimal Adjustments. No adjustment in a Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price need be made if such adjustment would result in a change of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in a Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price.

(g) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of a Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price pursuant to paragraph IV.E(2)(e), the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series B Preferred, Series C Preferred, Series D Preferred or Series E Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon written request at any time of any holder of Series B Preferred, Series C Preferred, Series D Preferred or Series E Preferred furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price, as applicable, at the time in effect for the Series B Preferred, Series C Preferred, Series D Preferred or Series E Preferred held, and (iii) the number of shares of Common and the amount if any, of other property which at the time would be received upon the conversion of the Series B Preferred, Series C Preferred, Series D Preferred or Series E Preferred.

(h) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, the Corporation shall mail to each holder of Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred at least twenty (20) days prior to the date specified herein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution.

(i) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common solely for the purpose of effecting the conversion of the shares of the Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred such number of its shares of Common as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred; and if at any time the number of authorized but unissued shares of Common shall not be sufficient to effect the conversion of all then outstanding shares of the Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common to such number of shares as shall be sufficient for such purpose.

(j) Notices. Any notice required by the provisions of this Certificate of Incorporation to be given to the holder of shares of the Series B Preferred, Series C Preferred, Series D Preferred or Series E Preferred shall be deemed given if (i) mailed, postage prepaid, and addressed to each holder of record at his latest address appearing on the books of the Corporation or (ii) given by email or other form of "electronic transmission" (as such term is defined in Section 232(c) of the Delaware General Corporation Law) in compliance with the provisions of the Delaware General Corporation Law and the Investor Rights Agreement (as defined below).

(k) Action. The Corporation will not, by amendment of its charter documents or through any reorganization, recapitalization, consolidation, merger, dissolution, issue or sale of securities or take any other action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this paragraph IV.E(2) and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred against impairment.

3. Redemption of Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred.

(a) On or after the Redemption Date, any holder of Series E Preferred may provide a written request to the Corporation (a "Series E Redemption Notice") to redeem any or all of the Series E Preferred of such holder, at an amount equal to (i) \$17.96 per share, minus (ii) any dividends previously declared and paid to such holder in respect of such share. The Corporation shall, upon each of the six month, twelve-month and eighteen month anniversary of its receipt of a Series E Redemption Notice, redeem for cash 1/3 of the shares of Series E Preferred set forth in the Series E Redemption Notice. If the Corporation fails to timely redeem the Series E Preferred as set forth herein on any specified payment date, then the amount

payable in respect of the Series E Preferred as set forth herein shall be increased at the rate of 5.0% per annum, compounding quarterly, for the first twelve months from such specified payment date, and afterwards at a rate of 8.0% per annum, compounding quarterly, until such amount (including interest) shall be paid in full.

(b) On or after the Redemption Date, any holder of Series B Preferred, Series C Preferred, or Series D Preferred may provide a written request to the Corporation (a "Series B/C/D Redemption Notice") to redeem any or all of the Series B Preferred, Series C Preferred or Series D Preferred, as applicable, of such holder, at an amount equal to (i) (A) \$0.5220 per share of Series B Preferred, minus (B) any amounts previously distributed to such holder for such shares from declared and paid dividends, redemptions (whether voluntary or mandatory) or otherwise, (ii) (A) \$1.07549 per share of Series C Preferred, minus (B) any amounts previously distributed to such holder for such shares from declared and paid dividends, redemptions (whether voluntary or mandatory) or otherwise, or (iii) (A) \$6.82 per share of Series D Preferred, minus (B) any amounts previously distributed to such holder for such shares from declared and paid dividends, redemptions (whether voluntary or mandatory) or otherwise. The Corporation shall, upon each of the six month, twelve-month and eighteen month anniversary of its receipt of a Series B/C/D Redemption Notice, redeem for cash 1/3 of the shares of Series B Preferred, Series C Preferred or Series D Preferred, as applicable, set forth in the Series B/C/D Redemption Notice. Notwithstanding the foregoing, if the Corporation is in receipt of a Series E Redemption Notice at any time when it has unpaid amounts to a holder of Series B Preferred, Series C Preferred or Series D Preferred that has submitted a Series B/C/D Redemption Notice, the Corporation shall subordinate its payment obligations to the holders of Series B Preferred, Series C Preferred or Series D Preferred to its payment obligations to the holders of Series E Preferred until the Board of Directors makes a determination that adequate provision has been made to redeem the Series E Shares subject to the Series E Redemption Notice on a full and timely basis. If the Corporation fails to timely redeem the Series B Preferred, Series C Preferred or Series D Preferred, as the case may be, as set forth herein on any specified payment date, then the amount payable in respect of the Series B Preferred, Series C Preferred or Series D Preferred, as the case may be, as set forth herein shall be increased at the rate of 5.0% per annum, compounding quarterly, for the first twelve months from such specified payment date, and afterwards at a rate of 8.0% per annum, compounding quarterly, until such amount (including interest) shall be paid in full; provided, however, that no such interest shall accrue while the Corporation's payment obligations to the holders of Series B Preferred, Series C Preferred or Series D Preferred are subordinated in accordance with the terms of this paragraph.

(c) Any Series E Redemption Notice or Series B/C/D Redemption Notice shall be sent by first class certified mail, return receipt requested, postage prepaid, to the Corporation at its then current address, with a copy of any notice or other communication sent by electronic mail.

(d) Once redeemed pursuant to the provisions of this paragraph IV.E(3), shares of Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred shall be cancelled and not subject to reissuance.

4. Series B, Series C, Series D and Series E Protective Provisions and Covenants.

(a) Approval of Series D Preferred. So long as any of the Series D Preferred shall be outstanding, the Corporation shall not without obtaining the approval (by vote or written consent, as provided by law) of the holders of not less than a majority of the outstanding shares of Series D Preferred:

(i) Preferred Terms. Adversely alter, modify or change the terms, rights, preferences or privileges of the shares of the Series D Preferred; provided however, that the following actions shall not be deemed to materially and adversely alter or change the rights, preferences or privileges of the Series D Preferred and therefore shall not require the approval of the Series D Preferred voting as a class: (i) increasing the number of Series D Preferred authorized, (ii) creating any new class or series of shares having preferences over any outstanding shares of Preferred as to dividends or assets, or authorize or issue shares of stock of any class or series or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any shares of stock of this Corporation other than stock junior in preference and priority as to dividends and assets, (iii) merging or consolidating with, or permitting any of its subsidiaries to merge or consolidate with, any entity, or (iv) selling, leasing, licensing or otherwise disposing of, or permitting any such subsidiary to sell, lease, license or otherwise dispose of, all or substantially all of the consolidated assets of the Corporation in any twelve month period; or

(ii) Reclassification. Reclassify any class or series of any Securities into shares having any preference or priority as to liquidation preference, redemption, dividends or assets or as to any other rights, powers, preferences or privileges senior to or on a parity with any such preference or priority of the Series D Preferred.

(b) Approval of Series B Preferred and Series C Preferred. So long as any of the Series B Preferred or Series C Preferred shall be outstanding, the Corporation shall not without obtaining the approval (by vote or written consent, as provided by law) of the holders of not less than two-thirds (2/3) of the outstanding shares of Series B Preferred and Series C Preferred, voting together as a single class:

(i) Preferred Terms. Adversely alter, modify or change the terms, rights, preferences or privileges of the shares of the Series B Preferred or Series C Preferred; provided however, that the following actions shall not be deemed to materially and adversely alter or change the rights, preferences or privileges of the Series B Preferred or Series C Preferred and therefore shall not require the approval of the Series B Preferred and Series D Preferred voting as a class: (i) increasing the number of Series B Preferred or Series C Preferred authorized, (ii) creating any new class or series of shares having preferences over any outstanding shares of Preferred as to dividends or assets, or authorize or issue shares of stock of any class or series or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any shares of stock of this Corporation other than stock junior in preference and priority as to dividends and assets, (iii) merging or consolidating with, or permitting any of its subsidiaries to merge or consolidate with, any entity, or (iv)

selling, leasing, licensing or otherwise disposing of, or permitting any such subsidiary to sell, lease, license or otherwise dispose of, all or substantially all of the consolidated assets of the Corporation in any twelve-month period; or

(ii) Reclassification. Reclassify any class or series of any Securities into shares having any preference or priority as to liquidation preference, redemption, dividends or assets or as to any other rights, powers, preferences or privileges senior to or on a parity with any such preference or priority of the Series B or C Preferred.

(d) Approval of Series E Preferred. So long as the Series E Preferred shall be *outstanding*, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, without obtaining the prior approval (by vote or written consent, as provided by law) of the holders of not less than a majority of the outstanding shares of Series E Preferred:

(i) Preferred Terms. Adversely alter, modify or change the terms, rights, preferences or privileges of the shares of the Series E Preferred; or

(ii) Adverse Amendments. Amend any provision of that certain Fifth Amended and Restated Investor Rights Agreement of the Corporation (the “**Investor Rights Agreement**”) in a manner which adversely affects the rights of the Series E Preferred or the holders thereof; or

(iii) Create a New Class. Adopt any Series Resolution or create any new class or series of Securities having preferences senior to or *pari passu* with the Series E Preferred as to liquidation preference, redemption, dividends or assets or as to any other rights, powers preferences or privileges, or authorize or issue any Securities of any class or series or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any Securities other than, in the case of all of the above actions, stock junior to the Series E Preferred in preference and priority as to liquidation preference, redemption, dividends or assets and as to any other rights, powers, preferences or privileges; or

(iv) Reclassification. Reclassify any class or series of any Securities into shares having any preference or priority as to liquidation preference, redemption, dividends, or assets or as to any other rights, powers, preferences or privileges senior to or on a parity with any such preference or priority of the Series E Preferred; or

(v) Merger, Consolidation, Sale of Assets. Enter into or agree to any (A) sale or purchase of assets outside the ordinary course of the Corporation in one or more series of related transactions involving payments to or from the Corporation in excess of the greater of (i) \$10,000,000 in the aggregate or (ii) 30% of the Corporation’s Available Cash ( as defined below) as of the date of such transaction or series of related transactions or (B) Significant Transaction, except to the extent that in connection with such transaction each outstanding share of Series E Preferred receives in cash at least an amount equal to (i) \$31.43 per share, minus (ii) an amount equal to any dividends



actually paid in respect of such share of Series E Preferred. As used herein, "Available Cash", means, as of any date of determination, cash on hand of the Corporation or available under the Corporation's loan agreements or lines of credit as of such date, less (i) the amount of cash necessary or advisable (as determined in good faith by the Board of Directors) to provide for the proper conduct of the Corporation's business (including the payment of operating expenses and taxes), (ii) reserves established by the Board of Directors to fund the foregoing amounts and for future capital expenditures and anticipated credit needs for the next twelve months (as determined in good faith by the Board of Directors), excluding for the purposes of this (ii) all capitalized leases and (y) the amount of cash necessary or advisable (as determined in good faith by the Board of Directors) for the Corporation to comply with applicable law and any of Corporation's debt instruments or other agreements.

(vi) Payment of Dividends. Purchase or redeem, or pay any dividend with respect to, or make any distributions on, any shares of capital stock of the Corporation, other than (A) dividends payable solely in shares of Common, (B) the redemption of Preferred as expressly set forth herein, or (C) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof.

(vii) Indebtedness. Pledge any assets or, except for the issuance of subordinated debt as approved by the Corporation's Board of Directors up to an amount equal to \$40.0 million within six months of the effective date (the "**Effective Date**") of the filing of this Fifth Amended and Restated Certificate of Incorporation, directly or indirectly, create, incur, assume, have outstanding or be or remain liable with respect to any indebtedness or obligation in excess of, as of any date of determination, an amount equal to, in the aggregate, 4.0 multiplied by the last twelve months of EBITDA of the Corporation, if any, preceding such date of determination, in any single transaction or series of related transactions, excluding, for purposes of the foregoing calculation, indebtedness existing as of the Effective Date under the Corporation's current Senior Line of Credit with Square 1 Bank dated as of April 2, 2015 (the "**Line of Credit**"), not to exceed \$20.0 million in the aggregate, and accounts payable and accrued expenses in the ordinary course of business; or

(viii) Related Parties. Except for employment related arrangements in the ordinary course of business, enter into any material transaction or agreement, including without limitation any lease or other rental or purchase agreement or any agreement providing for loans or extensions of credit by or to the Corporation, or any modification of any of the foregoing ("**contract**"), with any person or entity which is a shareholder, officer or director of the Corporation, a relative by blood or marriage of, a trust or estate for the benefit of, or a person or entity which directly or indirectly controls, is controlled by, or is under common control with, any such person or entity (hereinafter referred to as a "**Related Party**") or with respect to which any Related Party has or is to have a direct or indirect material interest, unless such contract is on terms no less

favorable to the Corporation than would be obtained in a transaction with a person that is not a Related Party and has been approved by no less than a majority of the number of directors constituting the whole Board of Directors or the Audit Committee of the Board of Directors (excluding for both the Board or the Committee, as the case may be, any member having a direct or indirect interest in the contract in question), excluding, in each case, contracts in effect on the Effective Date and disclosed to the holders of Series E Preferred; or

(ix) Corporate Existence. Liquidate, dissolve or wind up the Corporation; or

(x) Non-Wholly Owned Subsidiary. Create or cause or permit any subsidiary of the Corporation to become, a non-wholly owned subsidiary of the Corporation.

(e) Covenants. So long as any of the Series E Preferred shall be outstanding, the Corporation shall make available the following reports to holders of the Series E Preferred:

(i) Annual Financial Statements. As soon as practicable, but in any event within 120 days after the end of each fiscal year of the Corporation, a consolidated statement of earnings for such fiscal year, a consolidated balance sheet of the Corporation as of the end of such year, and a consolidated statement of cash flows for such year, such year-end financial reports to be in reasonable detail, prepared in accordance with generally accepted accounting principles, and audited and certified by an independent public accounting firm selected by the Audit Committee of the Board of Directors.

(ii) Quarterly Financial Statements. Within 60 days of the end of each calendar quarter, an unaudited statement of earnings, balance sheet and statement of cash flow for or as of the end of such quarter, in reasonable detail.

(iii) Budgets. As soon as practicable, but in any event prior to the beginning of each relevant fiscal year of the Corporation, a budget for such fiscal year as approved by the Corporation's Board of Directors.

(iv) Other Information. Copies of all information and reports delivered to the Corporation's lenders simultaneous with or immediately following the delivery of such information or reports to the Corporation's lenders

The Corporation shall permit each holder of Series E Preferred, Series D Preferred, Series C Preferred, and Series B Preferred, at such holder's expense, to visit and inspect the Corporation's properties; examine its books of account and records; and discuss the Corporation's affairs, finances, and accounts with its officers, during normal business hours of the Corporation as may be reasonably requested by such holder.

5. Future Financings.

(a) Preemptive Right. The Corporation grants to each holder of shares of Series B Preferred, Series C Preferred, Series D Preferred and/or Series E Preferred (each, a “**Series B/C/D/E Holder**”) a preemptive right to purchase such Series B/C/D/E Holder’s pro-rata share, as defined below, of any equity securities of the Corporation or any of its subsidiaries, including shares of Common and/or Preferred and/or securities of any type convertible into, or entitling the holder thereof to purchase shares of, Common or Preferred, proposed to be issued by the Corporation subsequent to the date hereof (the “**Securities**”). Such Series B/C/D/E Holder’s “**pro-rata share**” shall be that portion of the Securities proposed to be issued which bears the same relation to all of the Securities proposed to be issued as the Securities held by such Series B/C/D/E Holder (on an as-converted basis) bear to all outstanding shares of the Common (assuming for the purposes of such calculation the conversion of all outstanding securities which are convertible into Common without payment of additional consideration, including those held by the Series B/C/D/E Holder), all determined immediately prior to the offering of the Securities. For the avoidance of doubt, the preemptive right in this paragraph IV.E(5)(a) shall be combined, if applicable, with that preemptive right set forth in paragraph IV.D(5)(a) if such Series B/C/D/E Holder also is a Major Series A Holder such that, pursuant to this paragraph IV.E(5)(a), the Series B/C/D/E Holder will receive a preemptive right for its pro rata share based on its ownership of Series B Preferred, Series C Preferred, Series D Preferred and/or Series E Preferred and, pursuant to paragraph IV.D(5)(a), its pro rata share based on its ownership of Series A Preferred.

(b) Notice. In the event that the Corporation proposes to undertake an issue of Securities, it shall deliver to each Series B/C/D/E Holder written notice of its intention, describing such Securities, specifying each Series B/C/D/E Holder’s pro-rata share and stating the purchase price and other terms upon which it proposes to issue the same (the “**Option Notice**”). For a period of twenty (20) days following the receipt of the Option Notice, each Series B/C/D/E Holder shall have the right to elect, by written notice to the Corporation, to purchase all or any portion of such Series B/C/D/E Holder’s pro-rata share of the Securities described in the Option Notice. The closing of any sale pursuant to this paragraph IV.E(5)(b) shall occur within ninety (90) days of the date that the Option Notice is given.

(c) Sale by the Corporation. If all of the Securities are not elected to be purchased or acquired as provide in paragraph IV.E(5)(b) then, during the 90 day period following the expiration of the periods set forth in paragraph IV.E(5)(b), the Corporation may sell, free of any preemptive right on such Series B/C/D/E Holder’s part, the portion of such Series B/C/D/E Holder’s pro-rata shares not purchased pursuant to such preemptive right, upon the same terms specified in the Option Notice. If the Corporation does not enter into an agreement for the sale of the Securities within such period, or if such agreement is not consummated within thirty (30) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such Securities shall not be offered unless first reoffered to the Series B/C/D/E Holders in accordance with this paragraph IV.E(5).

(c) Exceptions. The preemptive right granted under this Paragraph IV.E(5) shall not apply to (i) the Excluded Stock or (ii) Securities issued for non-cash consideration, or as a so-called “equity feature” (such as a warrant) of a transaction primarily involving debt

securities or indebtedness for borrowed money, or pursuant to a merger or acquisition transaction, in each case, approved by the Board of Directors (including the Series E Director).

**F. Terms of Junior Series-1 Preferred.**

There is hereby created a series of Four Hundred Thousand (400,000) shares of Preferred designated "Junior Series-1 Convertible Preferred" (the "**Junior Series-1 Preferred**") having the following powers, preferences and relative participating, optional or other special rights and qualifications, limitations or restrictions thereof in addition to those otherwise specified in this Certificate of Incorporation.

1. Junior Series-1 Dividends.

No dividend or distribution of cash, capital stock or otherwise shall be declared or paid on the Common unless prior to or simultaneously with such declaration, a dividend or distribution is declared and paid on each share of Junior Series-1 Preferred in an amount equal to or greater than the amount that would have been received by the holders of the Junior Series-1 Preferred had such holders, on the record date for the Common dividend or distribution, held the number of shares of Common into which the Junior Series-1 Preferred would have been convertible upon conversion hereunder.

2. Junior Series-1 Conversion.

The Junior Series-1 Preferred shall be convertible into Common, as follows:

(a) Right to Convert. Each share of Junior Series-1 Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, into the number of shares of Common which results from dividing the Junior Series-1 Conversion Price (as defined below) per share in effect at the time of conversion into the "**Junior Series-1 Conversion Value**" per share. The number of shares of Common into which a share of Junior Series-1 Preferred is convertible is hereinafter referred to as the "**Junior Series-1 Conversion Rate**." As of the Effective Date, both the Junior Series-1 Conversion Price per share of Junior Series-1 Preferred (the "**Junior Series-1 Conversion Price**") and the Junior Series-1 Conversion Value are \$12.02. The Junior Series-1 Conversion Price shall be subject to adjustment as hereinafter provided.

(b) Automatic Conversion. Each share of Junior Series-1 Preferred shall automatically be converted into shares of Common at the then effective Junior Series-1 Conversion Rate immediately prior to the closing of a Qualified Offering.

(c) Mechanics of Conversion. Before any holder of Junior Series-1 Preferred shall be entitled to convert the same into shares of Common as provided in paragraph IV.F(2)(a), he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation and shall give written notice to the Corporation at such office that he elects to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Junior Series-1

Preferred a certificate or certificates for the number of shares of Common to which he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Junior Series-1 Preferred to be converted, and the person or persons entitled to receive the shares of Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common on such date.

In the event of an automatic conversion pursuant to paragraph IV.F(2)(b), the outstanding shares of Junior Series-1 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 Corporation; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common issuable upon such automatic conversion unless the certificates evidencing such shares of Junior Series-1 Preferred are either delivered to the Corporation as provided above, or the holder notifies the Corporation that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder of Junior Series-1 Preferred, a certificate or certificates for the number of shares of Common to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common. Such conversion shall be deemed to have been made immediately prior to and shall be contingent upon the closing of a Qualified Offering, and the person or persons entitled to receive the shares of Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common on such date.

(d) Fractional Shares. No fractional shares of Common shall be issued upon conversion of the Junior Series-1 Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the Junior Series-1 Conversion Price.

(e) Adjustment of Junior Series-1 Conversion Price. The Junior Series-1 Conversion Price shall be subject to adjustment from time to time as follows:

(i) If, on or before November 7, 2016, the Corporation shall issue any Additional Common Shares (other than Excluded Stock or stock dividends, subdivisions, split-ups, combinations or dividends, which such events are covered by paragraphs IV.F(2)(e)(ii-v)) or other securities of the Corporation directly or indirectly convertible into or exchangeable for Common (other than Excluded Stock) and if the consideration price per share, on an as-converted basis, is less than the Junior Series-1 Conversion Price as in effect immediately prior to the issuance of such Additional Common Shares (including other securities directly or indirectly convertible into or exchangeable for Common (other than Excluded Stock)), then and in such event, such Junior Series-1 Conversion Price shall be reduced,

concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP2 = CP1 * (A + B) / (A + C)$$

For purposes of the foregoing formula, the following definitions shall apply:

“CP2” shall mean the Junior Series-1 Conversion Price in effect immediately after such issue of Additional Common Shares (or other securities of the Corporation directly or indirectly convertible into or exchangeable for Common);

“CP1” shall mean the Junior Series-1 Conversion Price in effect immediately prior to such issue of Additional Common Shares (or other securities of the Corporation directly or indirectly convertible into or exchangeable for Common);

“A” shall mean the number of shares of Common outstanding and deemed outstanding immediately prior to such issue of Additional Common Shares (treating for this purpose as outstanding all shares of Common issuable upon exercise or conversion of securities directly or indirectly convertible into or exchangeable for Common outstanding immediately prior to such issue);

“B” shall mean the number of shares of Common that would have been issued if such Additional Common Shares (or other securities of the Corporation directly or indirectly convertible into or exchangeable for Common) had been issued at a price per share equal to CP1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP1); and

“C” shall mean the number of such Additional Common Shares (or other securities of the Corporation directly or indirectly convertible into or exchangeable for Common) issued in such transaction.

For the purposes of this paragraph IV.F(2)(e), the following provisions shall also be applicable:

(1) In the case of the issuance of Common for cash, the consideration received therefor shall be deemed to be the amount of cash paid therefor without deducting any discounts or commissions paid or incurred by the Corporation in connection with the issuance and sale thereof;

(2) In the case of the issuance of Common for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors of the Corporation;

(3) In the case of the issuance of (i) options to purchase or rights to subscribe for Common (other than Excluded Stock), (ii) securities by their terms convertible or exchangeable for Common (other than Excluded Stock), or (iii) options to purchase or rights to subscribe for such convertible or exchangeable securities:

(v) the aggregate maximum number of shares of Common deliverable upon exercise of such options to purchase or rights to subscribe for Common shall be deemed to be issuable for a consideration equal to the consideration (determined in the manner provided in subdivisions (1) and (2) above), if any, received by the Corporation upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common covered thereby;

(w) the aggregate maximum number of shares of Common deliverable upon conversion of or in exchange for any such convertible or exchangeable securities, or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof, shall be deemed to be issuable for a consideration equal to the consideration received by the Corporation for any such securities and related options or rights, plus the additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subdivisions (1) and (2) above);

(x) the aggregate maximum number of shares of Common deliverable upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof, shall be deemed to have been issued at the time such options or rights or securities were issued;

(y) any change in the number of shares of Common deliverable upon exercise of any such options or rights or conversion of or exchange for such convertible or exchangeable securities, or on any change in the minimum purchase price of such options, rights or securities, the Junior Series-1 Conversion Price, shall forthwith be readjusted to such Junior Series-1 Conversion Price as would have obtained had the adjustment (and any subsequent adjustments) made upon (x) the issuance of such options, rights or securities not exercised, converted or exchanged prior to such change, as the case may be, been made upon the basis of such change or (y) the options or rights related to such securities not converted or exchanged prior to such change, as the case may be, been made upon the basis of such change; and

(z) on the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Junior Series-1 Conversion Price shall forthwith be readjusted to such Junior Series-1 Conversion Price as would have obtained had the adjustment (and any subsequent adjustments) made upon the issuance of such options, rights, convertible or exchangeable securities or options or rights related to such convertible or exchangeable securities, as the case may be, been made upon the basis of the issuance of only the number of shares of Common actually issued upon the exercise of such options or rights, upon the conversion or exchange of such convertible or exchangeable securities or upon the exercise of the options or rights related to such convertible or exchangeable securities, as the case may be.

This paragraph IV.F(2)(e)(i) shall expire and no longer be in force or effect after November 7, 2016.

(ii) If the number of shares of Common outstanding at any time after the date hereof is increased by a stock dividend payable in shares of Common or by a subdivision or split-up of shares of Common, then, on the date such payment is made or such change is effective, the Junior Series-1 Conversion Price shall be appropriately decreased so that the number of shares of Common issuable on conversion of the Junior Series-1 Preferred shall be increased in proportion to such increase of outstanding shares.

(iii) If the number of shares of Common outstanding at any time after the date hereof is decreased by a combination of the outstanding shares of Common, then, on the effective date of such combination, the Junior Series-1 Conversion Price shall be appropriately increased so that the number of shares of Common issuable on conversion of the Junior Series-1 Preferred shall be decreased in proportion to such decrease in outstanding shares.

(iv) In case, at any time after the date hereof, of any capital reorganization, or any reclassification of the stock of the Corporation (other than a change in par value or as a result of a stock dividend or subdivision, split-up or combination of shares), or the consolidation or merger of the Corporation with or into another person (other than a consolidation or merger in which the Corporation is the continuing entity and which does not result in any change in the Common), or of the sale or other disposition of all or substantially all the properties and assets of the Corporation as an entirety to any other person, the shares of Junior Series-1 Preferred shall, if such event is not deemed a liquidation for purposes of paragraph IV.C(3), after such reorganization, reclassification, consolidation, merger, sale or other disposition, be convertible into the kind and number of shares of stock or other securities or property of the Corporation or of the entity resulting from such consolidation or surviving such merger or to which such properties and assets shall have been sold or otherwise disposed



to which such holder would have been entitled if immediately prior to such reorganization, reclassification, consolidation, merger, sale or other disposition he had converted his shares of Junior Series-1 Preferred into Common. The provisions of this paragraph IV.F(2)(e)(iii) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or other dispositions.

(v) All calculations under this paragraph IV.F(2)(e) shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(f) Minimal Adjustments. No adjustment in a Junior Series-1 Conversion Price need be made if such adjustment would result in a change in a Junior Series-1 Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in a Junior Series-1 Conversion Price.

(g) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of a Junior Series-1 Conversion Price pursuant to paragraph IV.F(2)(e), the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Junior Series-1 Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon written request at any time of any holder of Junior Series-1 Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Junior Series-1 Conversion Price at the time in effect for the Junior Series-1 Preferred held, and (iii) the number of shares of Common and the amount if any, of other property which at the time would be received upon the conversion of the Junior Series-1 Preferred.

(h) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, the Corporation shall mail to each holder of Junior Series-1 Preferred at least twenty (20) days prior to the date specified herein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution.

(i) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common solely for the purpose of effecting the conversion of the shares of the Junior Series-1 Preferred such number of its shares of Common as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Junior Series-1 Preferred; and if at any time the number of authorized but unissued shares of Common shall not be sufficient to effect the conversion of all then outstanding shares of the Junior Series-1 Preferred, the Corporation will take such corporate action as may, in the opinion

of its counsel, be necessary to increase its authorized but unissued shares of Common to such number of shares as shall be sufficient for such purpose.

(j) Notices. Any notice required by the provisions of this Certificate of Incorporation to be given to the holder of shares of the Junior Series-1 Preferred shall be deemed given if (i) mailed, postage prepaid, and addressed to each holder of record at his latest address appearing on the books of the Corporation or (ii) given by email or other form of "electronic transmission" (as such term is defined in Section 232(c) of the Delaware General Corporation Law) in compliance with the provisions of the Delaware General Corporation Law and the Investor Rights Agreement.

(k) Action. The Corporation will not, by amendment of its charter documents or through any reorganization, recapitalization, consolidation, merger, dissolution, issue or sale of securities or take any other action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this paragraph IV.F(2) and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Junior Series-1 Preferred against impairment.

3. Redemption of Junior Series-1 Preferred.

(a) On or after the Redemption Date, any holder of Junior Series-1 Preferred may provide a written request to the Corporation (a "**Junior Series-1 Redemption Notice**") to redeem any or all of the Junior Series-1 of such holder at an amount equal to (i) \$12.02 per share, minus (ii) any amounts previously distributed to such holder for such shares from declared and paid dividends, redemptions (whether voluntary or mandatory) or otherwise. The Corporation shall, upon each of the six month, twelve-month and eighteen month anniversary of its receipt of a Junior Series-1 Redemption Notice, redeem for cash 1/3 of the shares of Junior Series-1 set forth in the Junior Series-1 Redemption Notice. Notwithstanding the foregoing, if the Corporation is in receipt of a Series E Redemption Notice at any time when it has unpaid amounts to a holder of Junior Series-1 Preferred that has submitted a Junior Series-1 Redemption Notice, the Corporation shall subordinate its payment obligations to the holders of Junior Series-1 Preferred to its payment obligations to the holders of Series E Preferred until the Board of Directors makes a determination that adequate provision has been made to redeem the Series E Shares subject to the Series E Redemption Notice on a full and timely basis. If the Corporation fails to timely redeem the Junior Series-1 Preferred as set forth herein on any specified payment date, then the amount payable in respect of the Junior Series-1 Preferred as set forth herein shall be increased at the rate of 5.0% per annum, compounding quarterly, for the first twelve months from such specified payment date, and afterwards at a rate of 8.0% per annum, compounding quarterly, until such amount (including interest) shall be paid in full; provided, however, that no such interest shall accrue while the Corporation's payment obligations to the holders of Junior Series-1 Preferred are subordinated in accordance with the terms of this paragraph.

(b) Any Junior Series-1 Redemption Notice shall be sent by first class certified mail, return receipt requested, postage prepaid, to the Corporation at its then current address, with a copy of any notice or other communication sent by electronic mail.

(c) Once redeemed pursuant to the provisions of this paragraph IV.F(3), shares of Junior Series-1 Preferred shall be cancelled and not subject to reissuance.

4. Junior Series-1 Protective Provisions.

So long as any of the Junior Series-1 Preferred shall be outstanding, the Corporation shall not without obtaining the approval (by vote or written consent, as provided by law) of the holders of not less than a majority of the outstanding shares of Junior Series-1 Preferred:

(a) Change of Rights. Materially and adversely alter or change the rights, preferences or privileges of the Junior Series-1 Preferred; provided however, that the following actions shall not be deemed to materially and adversely alter or change the rights, preferences or privileges of the Junior Series-1 Preferred and therefore shall not require the approval of the Junior Series-1 Preferred voting as a class: (i) increasing the number of Junior Series-1 Preferred authorized, (ii) creating any new class or series of shares having preferences over any outstanding shares of Preferred as to dividends or assets, or authorize or issue shares of stock of any class or series or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any shares of stock of this Corporation other than stock junior in preference and priority as to dividends and assets, (iii) merging or consolidating with, or permitting any of its subsidiaries to merge or consolidate with, any entity, or (iv) selling, leasing, licensing or otherwise disposing of, or permitting any such subsidiary to sell, lease, license or otherwise dispose of, all or substantially all of the consolidated assets of the Corporation in any twelve-month period; or

(b) Reclassification. Reclassify any class or series of any Common into shares having any preference or priority as to dividends or assets superior to or on a parity with any such preference or priority of the Junior Series-1 Preferred.

## ARTICLE V

In furtherance and not in limitation of the powers conferred by statute and subject to paragraphs IV.E(4)(a)(ii), IV.E(4)(b)(ii) and IV.E(c)(ii) hereof, the Board of Directors shall have the power, both before and after receipt of any payment for any of the Corporation's capital stock, to adopt, amend, repeal or otherwise alter the Bylaws of the Corporation without any action on the part of the stockholders; provided, however, that the grant of such power to the Board of Directors shall not divest the stockholders of nor limit their power to adopt, amend, repeal or otherwise alter the Bylaws.

## ARTICLE VI

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

## ARTICLE VII

(A) To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

(B) The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

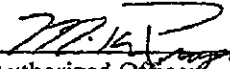
(C) Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

## ARTICLE VIII

The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any 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 Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Series E Preferred or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "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 Corporation.

21<sup>st</sup> IN WITNESS WHEREOF, said corporation has caused this certificate to be signed this  
day of July, 2015.

AVIDXCHANGE, INC.

By:   
Authorized Officer

Title: Chief Executive Officer  
Name: Michael Praeger

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF  
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT  
COPY OF THE CERTIFICATE OF AMENDMENT OF "AVIDXCHANGE, INC.",  
FILED IN THIS OFFICE ON THE FOURTEENTH DAY OF MARCH, A.D. 2016,  
AT 10:49 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE  
NEW CASTLE COUNTY RECORDER OF DEEDS.

A handwritten signature in black ink, appearing to read "JB", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Jeffrey W. Bullock, Secretary of State

3211684 8100  
SR# 20161633975

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 201977595  
Date: 03-14-16

**CERTIFICATE OF AMENDMENT**

**OF**

**THE FIFTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**AVIDXCHANGE, INC.**

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 10:49 AM 03/14/2016  
FILED 10:49 AM 03/14/2016  
SR 20161633975 - File Number 3211684

**AvidXchange, Inc.**, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

**FIRST:** That the Board of Directors of said corporation adopted a resolution proposing and declaring advisable the following amendment to the Fifth Amended and Restated Certificate of Incorporation (the "**Certificate**") of said corporation:

1. RESOLVED, that the Certificate be amended by changing the first sentence in the first paragraph of Article FOURTH, so that, as amended, the first sentence in the first paragraph of Article FOURTH shall be and read as follows:

"The total number of shares of stock which the Corporation shall have authority to issue is Sixty Two Million Seven Hundred Thousand (62,700,000) shares, of which Thirty Nine Million Eight Hundred Thousand (39,800,000) shares shall be Common Stock, \$0.001 par value per share (the "**Common**"), and Twenty Two Million Nine Hundred Thousand (22,900,000) shares shall be Preferred Stock, \$0.001 par value per share (the "**Preferred**")."

2. RESOLVED, that the Certificate be amended by changing the first sentence of Section C(1)(a) of Article FOURTH so that, as amended, the first sentence of Section C(1)(a) of Article FOURTH shall be and read as follows:

"In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of Series E Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common, Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and Junior Series-1 Preferred, by reason of their ownership thereof, an amount equal to the greater of (1) (x) the consideration per share paid for such Series E Preferred (as set forth in the Stock Purchase Agreement executed by such shareholder and the Corporation) (the "**Series E Price**"), minus (y) an amount equal to any dividends actually paid in respect of such Series E Preferred, or (2) the consideration that such holders would receive in the event that such holders converted the Series E Preferred into Common immediately prior to such liquidation, dissolution or winding up of the Corporation (the "**Series E Liquidation Preference**")."

3. RESOLVED, that the Certificate be amended by changing the first paragraph of Section E of Article FOURTH so that, as amended, the first paragraph of Section E of Article FOURTH shall be and read as follows:

“There is hereby created (a) a series of Five Million (5,000,000) shares of Preferred designated “Series B Convertible Preferred” (the “**Series B Preferred**”), (b) a series of Four Million Two Hundred Thousand (4,200,000) shares of Preferred designated “Series C Convertible Preferred” (the “**Series C Preferred**”), (c) a series of One Million Five Hundred Thousand (1,500,000) shares of Preferred designated “Series D Convertible Preferred” (the “**Series D Preferred**”), and (d) a series of Nine Million Eight Hundred Thousand (9,800,000) shares of Preferred designated “Series E Convertible Preferred” (the “**Series E Preferred**”), each having the following powers, preferences and relative participating, optional or other special rights and qualifications, limitations or restrictions thereof in addition to those otherwise specified in this Certificate of Incorporation.”

4. RESOLVED, that the Certificate be amended by changing Section E(2)(e)(ii)(7) and (8) of Article FOURTH so that, as amended, Section E(2)(e)(ii)(7) through (9) of Article FOURTH shall be and read as follows:

“(7) Securities to be issued, if any, pursuant to Article III of that certain Earnout Agreement, dated as of June 16, 2015, by and between the Corporation and SSI Legacy, LLC;

“(8) up to One Million Four Hundred Thousand (1,400,000) additional shares of Series E Preferred to be issued from time to time upon approval of the Board of Directors and at a price equal to or greater than \$17.96 per share; and

“(9) Securities issued pursuant to warrant agreements to purchasers of Series E Preferred to the extent such purchasers are providing advisory services to the Company at the time of such issuance; provided, however, that such issuance shall not exceed 65,000 shares of Securities per year.”

5. RESOLVED, that the Certificate be amended by changing the first sentence of Section E(3)(a) of Article FOURTH so that, as amended, the first sentence of Section E(3)(a) of Article FOURTH shall be and read as follows:

“On or after the Redemption Date, any holder of Series E Preferred may provide a written request to the Corporation (a “**Series E Redemption Notice**”) to redeem any or all of the Series E Preferred of such holder, at an amount equal to (i) the Series E Price, minus (ii) any dividends previously declared and paid to such holder in respect of such share.”

**SECOND:** That in lieu of a meeting and vote of stockholders, the stockholders have given written consent to said amendment in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

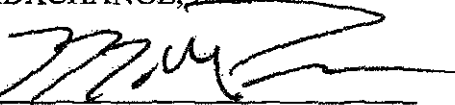


**THIRD:** That the aforesaid amendment was duly adopted in accordance with the applicable provisions of Sections 242 and 228 of the General Corporation Law of the State of Delaware.

*[Remainder of Page Intentionally Blank]*

IN WITNESS WHEREOF, said corporation, has caused this certificate to be signed this  
14th day of March, 2016.

AVIDXCHANGE, INC

By: 

Name: Michael Praeger

Title: Chief Executive Officer

**SECOND AMENDED  
AND RESTATED  
BYLAWS  
OF  
AVIDXCHANGE, INC.**

**SECOND AMENDED**

**AND RESTATED**

**BYLAWS**

**OF**

**AVIDXCHANGE, INC.**

**ARTICLE I**

**OFFICES**

1. **Principal Office.** The principal office of AvidXchange, Inc. (the "Corporation") shall be located in Mecklenburg County, North Carolina or such other place as is designated by the board of directors of the Corporation (the "Board of Directors").

2. **Registered Office.** The address of the registered office of the Corporation in the State of Delaware shall be at Corporation Service Company, 2711 Centerville Rd., Suite 400 Delaware 19808 or such other place as is designated by the Board of Directors.

3. **Other Offices.** The Corporation may have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or as the affairs of the Corporation may require.

**ARTICLE II**

**MEETINGS OF STOCKHOLDERS**

1. **Place of Meetings.** All meetings of stockholders shall be held at the principal office of the Corporation or at such other place, either within or without the State of Delaware, as shall be designated as set forth herein. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law ("DGCL").

2. **Annual Meeting.** The annual meeting of the stockholders shall be held at such date, time and place as is determined by the Board of Directors, for the purpose of electing directors of the Corporation and for the transaction of such other business as may be properly brought before the meeting and set forth in the meeting notice.

3. Special Meetings. Special meetings of the stockholders may be called by the Board of Directors or the President, and shall be held at such place, on such date, and at such time as it or he/she shall fix.

4. Adjournments. Any meeting of the stockholders, annual or special, may be adjourned from time to time to reconvene at the same or some other place, if any, and notice need not be given of any such adjourned meeting if the time, place, if any, thereof and the means of remote communication, if any, are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date is fixed for stockholders entitled to vote at the adjourned meeting, the Board of Directors shall fix a new record date for notice of the adjourned meeting and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at the adjourned meeting as of the record date fixed for notice of the adjourned meeting.

5. Notice of Meetings. Notice of the place, if any, date, hour, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and means of remote communication, if any, of every meeting of stockholders shall be given by the Corporation not less than ten days nor more than 60 days before the meeting (unless a different time is specified by law) to every stockholder entitled to vote at the meeting as of the record date for determining the stockholders entitled to notice of the meeting. Notices of special meetings shall also specify the purpose or purposes for which the meeting has been called. Except as otherwise provided herein or permitted by applicable law, notice to stockholders shall be in writing and delivered personally or mailed to the stockholders at their address appearing on the books of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, notice of meetings may be given to stockholders by means of electronic transmission in accordance with applicable law. Notice of any meeting need not be given to any stockholder who shall, either before or after the meeting, submit a waiver of notice or who shall attend such meeting, except when the stockholder attends for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of the meeting shall be bound by the proceedings of the meeting in all respects as if due notice thereof had been given.

6. List of Stockholders. The officer of the Corporation who has charge of the stock ledger shall prepare a complete list of the stockholders entitled to vote at any meeting of stockholders (provided, however, if the record date for determining the stockholders entitled to vote is less than ten days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each

stockholder and the number of shares of each class of capital stock of the Corporation registered in the name of each stockholder at least ten days before any meeting of the stockholders. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, on a reasonably accessible electronic network if the information required to gain access to such list was provided with the notice of the meeting or during ordinary business hours, at the principal place of business of the Corporation for a period of at least ten days before the meeting. If the meeting is to be held at a place, the list shall also be produced and kept at the time and place of the meeting the whole time thereof and may be inspected by any stockholder who is present. If the meeting is held solely by means of remote communication, the list shall also be open for inspection by any stockholder during the whole time of the meeting as provided by applicable law. Except as provided by applicable law, the stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger and the list of stockholders or to vote in person or by proxy at any meeting of stockholders.

7. Quorum of Stockholders. Unless otherwise required by law, the Corporation's Certificate of Incorporation (the "Certificate of Incorporation") or these bylaws, at each meeting of the stockholders, a majority in voting power of the shares of the Corporation entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power, by the affirmative vote of a majority in voting power thereof, to adjourn the meeting from time to time, in the manner provided in Section 2.4, until a quorum shall be present or represented. A quorum, once established, shall not be broken by the subsequent withdrawal of enough votes to leave less than a quorum. At any such adjourned meeting at which there is a quorum, any business may be transacted that might have been transacted at the meeting originally called. Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter.

8. Conduct of Meetings. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of the stockholders as it shall deem appropriate. At every meeting of the stockholders, the President, or in his or her absence or inability to act, the Treasurer, or, in his or her absence or inability to act, the person whom the President shall appoint, shall act as chairman of, and preside at, the meeting. The Secretary or, in his or her absence or inability to act, the person whom the chairman of the meeting shall appoint as secretary of the meeting, shall act as secretary of the meeting and keep the minutes thereof. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or

prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (c) rules and procedures for maintaining order at the meeting and the safety of those present; (d) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (e) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (f) limitations on the time allotted to questions or comments by participants.

9. Voting; Proxies. Unless otherwise required by law or the Certificate of Incorporation or unless directors are elected by written consent in lieu of an annual meeting, the election of directors shall be by written ballot and shall be decided by a plurality of the votes cast at a meeting of the stockholders by the holders of stock entitled to vote in the election. Unless otherwise required by law, the Certificate of Incorporation or these bylaws, any matter, other than the election of directors, brought before any meeting of stockholders shall be decided by the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the matter. Where a separate vote by a class or series or classes or series is required by law or the Certificate of Incorporation, other than the election of directors, the affirmative vote of the majority of shares of such class or series or classes or series present in person or represented by proxy at the meeting shall be the act of such class or series or classes or series. Each stockholder entitled to vote at a meeting of stockholders or to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date. Otherwise voting at meetings of stockholders need not be by written ballot.

10. Inspectors at Meetings of Stockholders. The Board of Directors, in advance of any meeting of stockholders, may, and shall if required by law, appoint one or more inspectors, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and make a written report thereof. The Board of Directors may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall (a) ascertain the number of shares outstanding and the voting power of each, (b)

determine the shares represented at the meeting, the existence of a quorum and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors and (e) certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of their duties. Unless otherwise provided by the Board of Directors, the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxies, votes or any revocation thereof or change thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery of the State of Delaware upon application by a stockholder shall determine otherwise. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for office at an election may serve as an inspector at such election.

11. Written Consent of Stockholders Without a Meeting. Any action to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action to be so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to (a) its registered office in the State of Delaware (by hand or by certified or registered mail, return receipt requested), (b) its principal place of business or (c) an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Every written consent shall bear the date of signature of each stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required by this Section 2.11, written consents signed by a sufficient number of holders to take action are delivered to the Corporation as aforesaid. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall, to the extent required by applicable law, be given to those stockholders who have not consented in writing, and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation.

12. Fixing the Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and



which record date shall not be more than 60 nor less than ten days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the determination of stockholders entitled to vote at the adjourned meeting and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for the determination of stockholders entitled to vote therewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting: (i) when no prior action by the Board of Directors is required by law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware (by hand, or by certified or registered mail, return receipt requested), its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded and (ii) if prior action by the Board of Directors is required by law, the record date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

### **ARTICLE III**

### **BOARD OF DIRECTORS**

1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may adopt such rules and procedures, not inconsistent with the Certificate of Incorporation, these bylaws or applicable law, as it may deem proper for the conduct of its meetings and the management of the Corporation.

2. Number; Term of Office. The number of directors of the Corporation shall be a number as directed by a resolution adopted by the Board of Directors between the range of 5 to eleven directors. Each director shall hold office until such director's death, resignation, retirement, removal, disqualification, or such director's successor is elected and qualifies. Directors need not be residents of the State of Delaware or stockholders of the Corporation.

3. Resignation. Any director may resign at any time by notice given in writing or by electronic transmission to the Corporation. Such resignation shall take effect at the date of receipt of such notice by the Corporation or at such later time as is therein specified.

4. Removal. Directors may be removed from office with or without cause by a vote of stockholders holding a majority of the outstanding shares entitled to vote at an election of directors. If a director is elected by a voting group of stockholders, only the stockholders of that voting group may participate in the vote to remove him. If any directors are so removed, new directors may be elected at the same meeting.

5. Vacancies. Except as set forth in the following sentence, a vacancy occurring in the Board of Directors, including, without limitation, a vacancy created by an increase in the authorized number of directors, may be filled solely by the affirmative votes of a majority of the remaining members of the Board of Directors, even if less than a quorum or by the sole remaining director. If, however, the vacant office was held by a director elected by a voting group that does not constitute all the stockholders, only the remaining director or directors elected by that voting group by the holders of shares of that voting group are entitled to fill the vacancy. A director elected to fill a vacancy shall be elected to hold office until the earlier of the expiration of the term of office of the director whom he or she has replaced, a successor is duly elected and qualified or the earlier of such director's death, resignation or removal.

6. Compensation. The Board of Directors may provide for the compensation of directors for their services as such and may provide for the payment of any and all expenses incurred by the directors in connection with such services.

7. Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate

members of any committee, who may replace any absent or disqualified member at any meeting of the committee. If a member of a committee shall be absent from any meeting, or disqualified from voting thereat, the remaining member or members present at the meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent permitted by applicable law, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers that may require it to the extent so authorized by the Board of Directors. Unless the Board of Directors provides otherwise, at all meetings of such committee, a majority of the then authorized members of the committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of the committee present at any meeting at which there is a quorum shall be the act of the committee. Each committee shall keep regular minutes of its meetings. Unless the Board of Directors provides otherwise, each committee designated by the Board of Directors may make, alter and repeal rules and procedures for the conduct of its business. In the absence of such rules and procedures each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to these bylaws.

#### **ARTICLE IV**

##### **MEETINGS OF DIRECTORS**

1. **Regular Meetings.** Regular meetings of the Board of Directors may be held without notice at such times and at such places as may be determined from time to time by the Board of Directors or its chairman.

2. **Special Meetings.** Special meetings of the Board of Directors may be held at such times and at such places as may be determined by the chairman or the President on at least 24 hours notice to each director given by one of the means specified in Section 4.3 hereof other than by mail or on at least three days notice if given by mail. Special meetings shall be called by the chairman or the President in like manner and on like notice on the written request of either (i) any two or more directors or (ii) any director nominated by the holders of the Corporation's Series E Preferred Stock.

3. **Notices.** Subject to Section 4.2, Section 4.4 and Section 4.9 hereof, whenever notice is required to be given to any director by applicable law, the Certificate of Incorporation or these bylaws, such notice shall be deemed given effectively if given in person or by telephone, mail addressed to such director at such director's address as it appears on the records of the Corporation, facsimile, e-mail or by other means of electronic transmission.

4. **Waiver of Notice.** Whenever notice to directors is required by applicable law, the Certificate of Incorporation or these bylaws, a waiver thereof, in

writing signed by, or by electronic transmission by, the director entitled to the notice, whether before or after such notice is required, shall be deemed equivalent to notice. Attendance by a director at a meeting shall constitute a waiver of notice of such meeting except when the director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting was not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special Board of Directors or committee meeting need be specified in any waiver of notice.

5. Quorum of Directors. The presence of a majority of the directors in office immediately before the meeting shall be necessary and sufficient to constitute a quorum for the transaction of business at any meeting of the Board of Directors.

6. Action By Majority Vote. Except as otherwise expressly required by these bylaws, the Certificate of Incorporation or by applicable law, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

7. Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all directors or members of such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writings or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or committee in accordance with applicable law.

8. Telephone Meetings. Board of Directors or Board of Directors committee meetings may be held by means of telephone conference or other communications equipment by means of which all persons participating in the meeting can hear each other and be heard. Participation by a director in a meeting pursuant to this Section 4.8 shall constitute presence in person at such meeting.

9. Adjourned Meetings. A majority of the directors present at any meeting of the Board of Directors, including an adjourned meeting, whether or not a quorum is present, may adjourn and reconvene such meeting to another time and place. At least 24 hours notice of any adjourned meeting of the Board of Directors shall be given to each director whether or not present at the time of the adjournment, if such notice shall be given by one of the means specified in Section 4.3 hereof other than by mail, or at least three days notice if by mail. Any business may be transacted at an adjourned meeting that might have been transacted at the meeting as originally called.

10. Organization. At each meeting of the Board of Directors, the chairman or, in his or her absence, another director selected by the Board of Directors shall preside. The secretary shall act as secretary at each meeting of the Board of Directors. If the secretary is absent from any meeting of the Board of Directors, an assistant secretary shall perform the duties of secretary at such meeting; and in the absence

from any such meeting of the secretary and all assistant secretaries, the person presiding at the meeting may appoint any person to act as secretary of the meeting.

## **ARTICLE V**

### **OFFICERS**

1. **Positions.** The officers of the Corporation shall consist of a President, a Secretary, a Treasurer, and such Vice Presidents, and other officers as the Board of Directors may from time to time elect. Any two or more offices, other than that of President and Secretary, may be held by the same person. In no event, however, may an officer act in more than one capacity where action of two or more officers is required.

2. **Election.** The officers of the Corporation shall be elected by the Board of Directors. Such election may be held at any regular or special meeting of the Board of Directors or without a meeting by consent as provided in Section 4.7 of these bylaws.

3. **Term.** Each officer of the Corporation shall hold office until such officer's successor is elected and qualified or until such officer's earlier death, resignation or removal. Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors at any time with or without cause by the majority vote of the members of the Board of Directors then in office. The removal of an officer shall be without prejudice to his or her contract rights, if any. The election or appointment of an officer shall not of itself create contract rights. Any officer of the Corporation may resign at any time by giving written notice of his or her resignation to the president or the secretary. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Should any vacancy occur among the officers, the position shall be filled for the unexpired portion of the term by appointment made by the Board of Directors.

4. **President.** The President shall be the chief executive officer of the Corporation (and if elected as the Chief Executive Officer shall serve for the purposes of these bylaws as President as well) and, subject to the control of the Board of Directors, shall supervise and control the management of the Corporation in accordance with these bylaws. He or she shall, in the absence of a chairman of the Board of Directors, preside at all meetings of the Board of Directors. He or she is empowered to sign, with any other proper officer as authorized by the Board of Directors (as necessary), certificates for shares of the Corporation and any deeds, mortgages, bonds, contracts, or other instruments which may be lawfully executed on behalf of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be delegated by the Board of Directors to some other officer or agent; and, in general, he or she shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

5. Vice Presidents. The Vice Presidents shall perform such other duties and have such other powers as the President or the Board of Directors shall prescribe. The Board of Directors may designate one or more Vice Presidents to be responsible for certain functions, including, without limitation, Marketing, Finance, Manufacturing and Personnel.

6. Secretary. The Secretary shall keep accurate records of the acts and proceedings of all meetings of stockholders, Board of Directors and, when required, committees. He or she shall give, or cause to be given, all notices required by law and by these bylaws. He or she shall have general charge of the corporate books and records and of the corporate seal, and he or she shall affix the corporate seal to any lawfully executed instrument requiring it. He or she shall perform all duties incident to the office of Secretary and such other duties as may be assigned him from time to time by the President or by the Board of Directors.

7. Treasurer. The Treasurer shall be appointed by the Board of Directors and, unless a different individual is selected by the Board of Directors, shall be the chief financial officer of the Corporation (and, if elected as the Chief Financial Officer without the Board of Directors choosing a separate Treasurer, shall serve for the purposes of these bylaws as Treasurer as well) and shall have custody of *all* funds and securities belonging to the Corporation, except as otherwise provided by the Board of Directors, and shall receive, deposit or disburse the same under the direction of the Board of Directors. He or she shall keep full and accurate accounts of the finances of the Corporation in books especially provided for that purpose, which may be consolidated or combined statements of the Corporation and one or more of its subsidiaries as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of cash flows for the year unless that information appears elsewhere in the financial statements. The Treasurer shall, in general, perform all duties incident to the office of Treasurer and such other duties as may be assigned to him from time to time by the President or by the Board of Directors.

8. Duties of Officers May Be Delegated. In case any officer is absent, or for any other reason that the Board of Directors may deem sufficient, the President or the Board of Directors may delegate for the time being the powers or duties of such officer to any other officer or to any director.

## ARTICLE VI

### CONTRACTS, CHECKS AND DEPOSITS

1. Contracts. The Board of Directors or the President may authorize any officer or officers, or employee or employees, to enter into any contract or execute and deliver any instrument on behalf of the Corporation, and such authority may be general or confined to specific instances.

2. Checks, Notes, Drafts, Etc. All checks, notes, drafts or other orders for the payment of money of the Corporation shall be signed, endorsed or accepted in the name of the Corporation by such officer, officers, person or persons as from time to time may be designated by the Board of Directors or by an officer or officers authorized by the Board of Directors to make such designation.

3. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such depository or depositories as the Board of Directors or Treasurer, or any other officer of the Corporation to whom power in this respect shall have been given by the Board of Directors, shall direct.

## **ARTICLE VII**

### **STOCK CERTIFICATES AND THEIR TRANSFER**

1. Certificates Representing Shares. The shares of stock of the Corporation shall be represented by certificates; provided that the Board of Directors may provide by resolution or resolutions that some or all of any class or series shall be uncertificated shares that may be evidenced by a book-entry system maintained by the registrar of such stock. If shares are represented by certificates, such certificates shall be in the form, other than bearer form, approved by the Board of Directors. These certificates shall be signed by the President or any Vice President or a person who has been designated as the chief executive officer of the Corporation and by the Secretary, Assistant Secretary, Treasurer or Assistant Treasurer and sealed with the seal of the Corporation or a facsimile thereof. The signatures of any such officers upon a certificate may be facsimiles or may be engraved or printed or omitted if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the Corporation itself or an employee of the Corporation. In case any officer who has signed or whose facsimile or other signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer at the date of its issue. The certificates shall be consecutively numbered or otherwise identified; and the name and address of the persons to whom they are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the Corporation.

2. Transfers of Stock. Stock of the Corporation shall be transferable in the manner prescribed by law and in these bylaws. Transfers of stock shall be made on the books of the Corporation only by the holder of record thereof, by such person's attorney lawfully constituted in writing and, in the case of certificated shares, upon the surrender of the certificate thereof, which shall be cancelled before a new certificate or uncertificated shares shall be issued. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

3. Transfer Agents and Registrars. The Board of Directors may appoint, or authorize any officer or officers to appoint, one or more transfer agents and one or more registrars.

4. Lost, Stolen or Destroyed Certificates. The Board of Directors may direct a new certificate or uncertificated shares to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the owner of the allegedly lost, stolen or destroyed certificate. When authorizing such issue of a new certificate or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of the lost, stolen or destroyed certificate, or the owner's legal representative to give the Corporation a bond sufficient to indemnify it against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed or the issuance of such new certificate or uncertificated shares.

5. Other Regulations. The issue, transfer, conversion and registration of certificate of stock shall be governed by such other regulations as the Board of Directors may establish.

## **ARTICLE VIII**

### **INDEMNIFICATION**

1. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer or trustee or in any other capacity while serving as a director, officer or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; provided, however, that, except as provided in Section 8.3 below with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.



2. Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 8.1 above, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorneys' fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the DGCL requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 8.2 or otherwise.

3. Right of Indemnitee to Bring Suit. If a claim under Section 8.1 or 8.2 above is not paid in full by the Corporation within 60 days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII or otherwise shall be on the Corporation.

4. Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VIII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Corporation's Certificate of Incorporation, bylaws, agreement, vote of stockholders or directors or otherwise.

5. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

6. Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VIII with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

7. Nature of Rights. The rights conferred upon indemnitees in this Article VIII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer or trustee and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VIII that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

## **ARTICLE IX**

### **GENERAL PROVISIONS**

1. Dividends. Subject to applicable law and the Certificate of Incorporation, dividends upon the shares of capital stock of the Corporation may be declared by the Board of Directors at any regular or special meeting of the Board of Directors. Dividends may be paid in cash, in property or in shares of the Corporation's capital stock, unless otherwise provided by applicable law or the Certificate of Incorporation.

2. Seal. The seal of the Corporation shall be in such form as shall be approved by the Board of Directors. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise, as may be prescribed by law or custom or by the Board of Directors.

3. Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors.

4. Books and Records. Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be maintained on any information storage device or method; *provided that* the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to applicable law.

5. Conflict with Applicable Law or Certificate of Incorporation. These bylaws are adopted subject to any applicable law and the Certificate of Incorporation. Whenever these bylaws may conflict with any applicable law or the Certificate of Incorporation, such conflict shall be resolved in favor of such law or the Certificate of Incorporation.

6. Forum Selection. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, the Certificate of Incorporation or the bylaws or (iv) any action asserting a claim governed by the internal affairs doctrine, in each case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein.

7. Amendment. Subject to the provisions of the Corporation's Certificate of Incorporation, (a) these bylaws may be amended, altered, changed, adopted and repealed or new bylaws adopted by the Board of Directors, and (b) the stockholders, through the affirmative vote of stockholders entitled to exercise a majority of the voting power of the Corporation on an as-converted basis, may make additional bylaws, and may amend, alter, change, adopt and repeal any bylaws whether such bylaws were originally adopted by them or otherwise.

8. Other Provisions. All terms used in these bylaws shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require.

## Exhibit A-18 “Secretary of State”

AvidXchange, Inc.

Please see attached evidence of AvidXchange’s registration with Ohio Secretary of State.

# Exhibit B-1 “Jurisdictions of Operation”

## AvidXchange, Inc.

AvidXchange, Inc. has applied or is currently in the process of applying for natural gas and/or electric broker licenses in the following jurisdictions:

Delaware

District of Columbia

Illinois

Maine

Massachusetts

Maryland

New Hampshire

New Jersey

Pennsylvania

Rhode Island

Texas

As of the date of this filing, approvals in the above jurisdictions are pending other than Pennsylvania which application is currently being prepared for submission.

## Exhibit B-2 “Experience & Plans”

### AvidXchange, Inc.

AvidXchange will confine its natural gas broker activities to those customers who are currently bill payment customers. As such, AvidXchange has no plans to market its natural gas broker services to customers who do not first contract for its bill payment services.

No billing statements will be provided to customers for natural gas broker services. AvidXchange plans to introduce a price adder to each customer's supplier per billing unit price. The customer will be informed of the price adder prior to their execution of any supplier contract. The supplier will, in turn, pay AvidXchange the monthly or quarterly accumulated price adder based on the customer's monthly or quarterly natural gas usage.

As part of its existing practices and experience, AvidXchange will tender its customers' historical natural gas usage profiles to licensed natural gas suppliers. Based upon the pricing and contract terms, AvidXchange will recommend to each customer which supplier price and contract should be signed by the customer. Prior to the execution any natural gas supplier contract negotiated by AvidXchange, each customer will be fully informed of the price adder. Additionally, based upon each customer's historical usage, AvidXchange will inform the customer of the estimated amount of money which will be paid by the customer through the execution of the supplier contract.

Each customer may, at their sole discretion, cancel AvidXchange's natural gas broker service without penalty.

Each customer will be provided with AvidXchange contact information for any inquiry or complaint. Each customer inquiry or complaint will be handled in a timely fashion with the intent of meeting or exceeding their expectations.

AvidXchange will fully comply with Ohio Revised Code Section 4929.22 and contained in Chapter 4901:1-29 of the Ohio Administrative Code

## Exhibit B-3 “Summary of Experience”

### AvidXchange, Inc.

AvidXchange has been actively involved in the brokering and/or aggregating of natural gas service for its bill payment customers since 2006. This activity has occurred in those areas of the United States that allow for the purchasing of deregulated natural gas supplies. These areas include, but are not limited to, California, Connecticut, Michigan, New York and Texas

AvidXchange’s brokering and/or aggregation of customers’ natural gas services totals in the hundreds. This service has been confined to those bill payment customers of AvidXchange and the customers are commercial, mercantile or industrial in nature.

AvidXchange’s natural gas broker and/or aggregation service is headed by Robert Macksoud. He is assisted in this effort by Vanessa Markota. Summaries of their experience in this area can be found attached to this Exhibit.

**Robert Macksoud, CEP**

One Executive Drive, Suite 401, Somerset, NJ 08873

732-748-4293 [rmacksoud@avidxchange.com](mailto:rmacksoud@avidxchange.com)

**Professional Experience:**

**Director, Energy Procurement & Rate Analysis, AvidXchange, Inc., Somerset, NJ**

**Mar. 2003 – Present**

*Managing AvidEnergy, a division of AvidXchange responsible for negotiating 3<sup>rd</sup> party electric and natural gas contracts and providing utility bill analysis service to its clients. Division analyzes/negotiates utility tariffs in order to take advantage of alternate rates, special riders, tax regulations, off-tariff rates, and equipment incentives that produce cost savings opportunities. Responsibilities also include identifying, quantifying and implementing savings opportunities in areas such as electric distribution upgrades, meter consolidations, power factor correction, gas and electric interruptible options, fuel switching, etc., as well as determining the financial feasibility of these types of projects. Also oversee the maintenance of an extensive rate library and analysis programs covering all investor-owned utilities in the U.S. and the major municipals and cooperatives.*

**Assistant Vice President, NUS Consulting Group, Park Ridge, NJ**

**Nov. 1987 – Mar. 2003**

*Worked in this firm for 15 years in a variety of capacities. Was involved in all aspects of energy consulting (in both regulated and deregulated markets) for thousands of commercial, industrial and institutional clients throughout the 50 States, Canada, Mexico, the Caribbean and South America. Experienced in minimizing clients' energy expenditures reaches across all commodities including electricity, natural gas, water, sewer, propane/petroleum products, and steam and coal purchases. Performed, and then managed, all related functions such as the identification, investigation and implementation of creative cost-savings solutions.*

**Financial Analyst, Ziegelman Organization. New York, NY**

**Oct. 1986 – Nov. 1987**

*Assisted in evaluating residential rental properties in the 5 boroughs for purchase and conversion to cooperatives and condominiums. Prepared reports comparing property attributes and locations. Represented firm at closings.*

**Project Manager, Costco, Inc., Secaucus, NJ**

**May 1985 – Oct. 1986**

*Assisted in identifying and acquiring commercial real estate properties for expansion to the East Coast. Performed demographic, parking and traffic studies and investigated zoning laws and tax codes.*

**Education:**

BS–Finance, Fairleigh Dickinson University, 1985

MBA-Management, Rutgers University, 1991

Certified Energy Procurement Professional, AEE, 2012

**Personal:**

Eagle Scout and continue to remain active via various leadership capacities in the B.S.A.

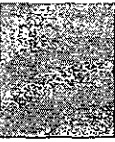


Coaches various Youth League sports including tennis, basketball and baseball.

# VANESSA MARKOTA

ONE EXECUTIVE DRIVE, SUITE 401, SOMERSET, NJ 08873

732-748-4287 • vmarkota@avidxchange.com



## Education

Seton Hall University – South Orange, NJ

2005 – M.A. English

2003 – B.A. English, Minor: Criminal Justice

- Graduated Magna Cum Laude with English Departmental Honors Citation for highest GPA in major

## Professional Experience

Energy Procurement Analyst • September 2014 – present

AvidXchange • Somerset, NJ

- Responsible for assisting in identifying, implementing, monitoring, and reporting cost savings opportunities for existing clients and new prospects
- Participate in negotiation of energy contracts
- Perform utility bill rate analysis services in order to take advantage of alternate rates, tax regulations, riders, and third party electric supply alternatives that may produce savings opportunities
- Review/evaluate utility data extracted from the company's database to identify savings and 3<sup>rd</sup> party electric and natural gas supply opportunities
- Develop and analyze customer load profiles
- Assist in preparing and submitting Requests for Proposal
- Monitor all existing agreement terms

Account Administrator • March 2013 – September 2014

AvidXchange • Somerset, NJ

- Support Utility Bill Analysis & Reporting process to effectively identify and quantify billing errors and resolve exceptions
- Maintain customer database and account information
- Process customer utility bills to insure timely payment and avoid late payment penalties
- Assist in the analysis of customer utility bill data for accuracy and savings opportunities
- Maintain client account records and set up new accounts in the company's internal database

Adjunct Instructor • September 2008 – present

Raritan Valley Community College • North Branch, NJ

English Composition I and II courses

- Instruct students in essay formation and argument development
- Choose curriculum readings and create lesson plans
- Foster student discussion surrounding the explication of readings and the identification of shared ideas/connections between texts

## Skills

- Fluent in reading, speaking, and writing German
- Adaptable to changing/fast-paced work environments

## Exhibit B-4 “Disclosure of Liabilities and Investigations”

### AvidXchange, Inc.

AvidXchange has **no** existing, pending or past rulings, judgments, contingent liabilities, revocation of authority, regulatory investigations, or any other matter that could adversely impact its financial or operational status or ability to provide the services it is seeking to be certified to provide.

## Exhibit C-1 “Annual Reports”

AvidXchange, Inc.

AvidXchange is a privately held company and does not produce SEC annual shareholder reports.

## Exhibit C-2 “SEC Filings”

### AvidXchange, Inc.

AvidXchange is a privately held company and does not, and is not required to, file periodic reports with the SEC in accordance with the Securities Exchange Act of 1934.

## Exhibit C-4 “Financial Arrangements”

### AvidXchange, Inc.

As disclosed in its financial statements in Exhibit C-3, AvidXchange believes that it has more than sufficient cash on hand and access to liquidity through its credit facilities to support its CRNGS business particularly in light of the expected value/revenue of the CRNGS business (see Exhibit C-5). The revenue of the CRNGS business is not a material portion of AvidXchange’s total revenue as a whole.

## Exhibit C-5 “Forecasted Financial Statements”

As AvidXchange, Inc. does not possess formal forecasted financial statements, we expect the following revenue in the next two (2) years from our Ohio natural gas broker activity.

Year 2016:     \$0

Year 2017:     \$2,000

Prepared By: Robert Macksoud, Jr.

Address:        1111 Metropolitan Avenue, Ste 650, Charlotte, NC 28204

Email:           rmacksoud@avidxchange.com

Telephone:      732-748-4293

## Exhibit C-6 “Credit Ratings”

(Dunn and Brad Street): (70)

(Experian) (78)



## Exhibit C-7 “Credit Report”

Please find attached AvidXchange’s recent Dun & Bradstreet report.



Printed By: Stefani Hult  
Date Printed: July 28, 2016

## Live Report : AVIDXCHANGE, INC.

D-U-N-S® Number: 19-023-7110

Endorsement/Billing Reference: stefanih@piracle.com

### D&B Address

**Address** 1111 Metropolitan Ave  
Ste 650  
Charlotte, NC, US -  
28204

**Phone** 704 971-8160

**Fax** 704-971-8172

**Location Type** Headquarters  
**Web** www.avidxchange.com

**Added to Portfolio:** 12/02/2015

**Last View Date:** 04/04/2016

**Endorsement :** stefanih@piracle.com

## Company Summary

Currency: Shown in USD unless otherwise indicated

### Score Bar

<b>PAYDEX®</b>	70	Paying 15 days past due
<b>Commercial Credit Score Class</b>	1	Low Risk of severe payment delinquency.
<b>Financial Stress Score Class</b>	4	Moderate to High Risk of severe financial stress.
<b>Credit Limit - D&amp;B Conservative</b>	80,000.00	Based on profiles of other similar companies.
<b>D&amp;B Rating</b>	1R3	1R indicates 10 or more Employees, Credit appraisal of 3 is fair

### D&B 3-month PAYDEX®

**3-month D&B PAYDEX®:** 79

Lowest Risk:100;Highest Risk:1

When weighted by amount, Payments to suppliers average 2 Days Beyond Terms

### D&B PAYDEX®

**D&B PAYDEX®** 70

Lowest Risk:100;Highest Risk:1

When weighted by amount, Payments to suppliers average 15 days beyond terms

### D&B Company Overview

This is a headquarters location

**Branch(es) or Division(s) exist** Y

**Chief Executive** MICHAEL  
PRAEGER, CEO

**Year Started** 2000

**Employees** 132  
(UNDETERMINED  
Here)

**Financing** SECURED

**SIC** 7371

### Public Filings

The following data includes both open and closed filings found in D&B's database on this company.

Record Type	Number of Records	Most Recent Filing Date
Bankruptcies	0	-
Judgments	0	-
Liens	0	-
Suits	0	-
UCCs	95	03/03/16

Line of business Custom computer  
programming  
NAICS 541511  
History Status CLEAR

The public record items contained herein may have been  
paid, terminated, vacated or released prior to todays date.

#### Financial Stress Score Class

#### Financial Stress Score Class: 4

Lowest Risk:1;Highest Risk :5

#### Commercial Credit Score Class

#### Commercial Credit Score Class: 1

Lowest Risk:1;Highest Risk :5

#### Detailed Trade Risk Insight™

Days Beyond Terms Past 3 Months

**1**  
Days

Dollar-weighted average of 20 payment experiences  
reported from 9 Companies

Recent Derogatory Events

May-16 Jun-16 Jul-16

	May-16	Jun-16	Jul-16
Placed for Collection	-	-	-
Bad Debt Written Off	-	-	-

#### FirstRain Company News

**NH Business Newsreel Relyco acquires check**  
2016-07-28T00:39:02 MST 12:39

**AvidXchange™ Announces Title Sponsorship**  
2016-07-26T08:09:15 MST 8:09 AM-Seeking Alpha

**Charlotte Oktoberfest off for this year**  
2016-07-25T07:19:49 MST 7:19 AM-Charlotte

**AvidXchange's CFO, Karen Bertaux, Wins**  
2016-07-22T08:09:15 MST 8:09 AM-Seeking Alpha

**Omatic Software and AvidXchange™**  
2016-07-20T00:16:35 MST 12:16 AM-PRWeb

**AvidXchange Music Factory Launches**  
2016-07-11T14:11:33 MST 2:11 PM-IT News Online

**Relyco Announces Acquisition of Supply**  
2016-07-11T05:06:34 MST 5:06 AM-Peripherals

**CPCC to Provide Customized Training for**  
2016-07-06T04:43:46 MST 4:43 AM-IT News Online

**Fraud Persists Despite Electronic Payments |**  
2016-07-06T01:01:58 MST 1:01 AM-PYMNTS

**B2B Fraud: AP Automation and Email Scams**  
2016-06-30T09:27:23 MST 9:27

2016-06-23T08:24:29 MST 8:24 AM-Commercial

**Bellwether Enterprise Closes Refi for Charlotte**  
2016-06-23T08:24:29 MST 8:24 AM-Commercial

**Headline News from PaymentsNews.com -**  
2016-06-21T07:33:23 MST 7:33 AM-Payments News

**Billtrust and AvidXchange(TM) Announce**  
2016-06-21T05:43:07 MST 5:43 AM-IT News Online

**Billtrust Taps AvidXchange To Bring AR, AP**  
2016-06-21T05:00:55 MST 5:00 AM-PYMNTS

**A Simpler Vision For Accounts Payable Tech**  
2016-06-21T01:05:25 MST 1:05 AM-PYMNTS

**The Short History And Long Future Of The**  
2016-05-26T17:51:45 MST 5:51 PM-Bank Innovation

**Bank of America : The five-year proliferation of**  
2016-05-25T08:31:41 MST 8:31 AM-4-Traders

**AvidXchange topping out**  
2016-05-23T15:08:39 MST 3:08 PM-Charlotte

**AvidXchange ramps up growth plans at Music**  
2016-05-23T14:28:15 MST 2:28 PM-Charlotte

**AvidXchange(TM) Announces Platinum**  
2016-05-17T13:18:34 MST 1:18 PM-IT News Online

**Help us find this year's Top Workplaces in the**  
2016-05-01T03:08:17 MST 3:08 AM-Charlotte

**AvidXchange Expands Executive Team to**  
2016-04-28T06:52:35 MST 6:52

**6 cloud services for growing your small**  
2016-04-11T20:51:33 MST 8:51 PM-IDG Connect

**PayPal CEO says company 'just couldn't**  
2016-04-06T10:43:03 MST 10:43 AM-FresnoBee

**AP Automation: Giving You "New Time"**  
2016-03-25T11:27:09 MST 11:27

**Wells Fargo : PayPal bringing 400 jobs with**  
2016-03-18T15:30:47 MST 3:30 PM-4-Traders

**What's opening when? Rounding up the latest**  
2016-03-18T08:36:09 MST 8:36 AM-Charlotte

**MRI Software Partners with AvidXchange to**  
2016-03-15T04:43:24 MST 4:43

**The Rise Of Fintech Mega-Rounds: \$50M+**  
2016-03-14T13:30:42 MST 1:30 PM-CB Insights

**Is B2B FinTech Heating Up At The Wrong**  
2016-03-01T06:16:40 MST 6:16 AM-PYMNTS

**Lexington Realty: Who's A Big Dummy Now?**  
2016-02-29T05:22:07 MST 5:22 AM-Seeking Alpha

**Report: N.C. startup funding doubled in 2015**  
2016-02-19T11:20:31 MST 11:20 AM-The Courier-

**North Carolina Equity Investments Double,**  
2016-02-18T12:05:32 MST 12:05 PM-Xconomy

**New burger and beer joint coming to Plaza**  
2016-02-10T15:08:39 MST 3:08 PM-Charlotte

**AvidXchange and Open Systems Form**  
2016-02-09T08:54:08 MST 8:54

**Can a tech ecosystem really predict who will**  
2016-02-05T11:46:22 MST 11:46 AM-Vator

**AvidXchange Acknowledged as Most Well-**  
**2016-02-03T01:22:25 MST 1:22 AM-PRWeb**

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#### **FirstRain Company News**

**NH Business Newsreel Relyco acquires check**  
**2016-07-28T00:39:02 MST 12:39**

**AvidXchange™ Announces Title Sponsorship**  
**2016-07-26T08:09:15 MST 8:09 AM-Seeking Alpha**

**Charlotte Oktoberfest off for this year**  
**2016-07-25T07:19:49 MST 7:19 AM-Charlotte**

**AvidXchange's CFO, Karen Bertaux, Wins**  
**2016-07-22T08:09:15 MST 8:09 AM-Seeking Alpha**

**Omatic Software and AvidXchange™**  
**2016-07-20T00:16:35 MST 12:16 AM-PRWeb**

**AvidXchange Music Factory Launches**  
**2016-07-11T14:11:33 MST 2:11 PM-IT News Online**

**Relyco Announces Acquisition of Supply**  
**2016-07-11T05:06:34 MST 5:06 AM-Peripherals**

**CPCC to Provide Customized Training for**  
**2016-07-06T04:43:46 MST 4:43 AM-IT News Online**

**Fraud Persists Despite Electronic Payments |**  
**2016-07-06T01:01:58 MST 1:01 AM-PYMNTS**

**B2B Fraud: AP Automation and Email Scams**  
**2016-06-30T09:27:23 MST 9:27**

**CoreNet Global Carolinas Event - Shaping**  
**2016-06-28T08:27:11 MST 8:27 AM-NC Headlines**

**Bellwether Enterprise Closes Refi for Charlotte**  
**2016-06-23T08:24:29 MST 8:24 AM-Commercial**

**Headline News from PaymentsNews.com -**  
**2016-06-21T07:33:23 MST 7:33 AM-Payments News**

**Billtrust and AvidXchange(TM) Announce**  
**2016-06-21T05:43:07 MST 5:43 AM-IT News Online**

**Billtrust Taps AvidXchange To Bring AR, AP**  
**2016-06-21T05:00:55 MST 5:00 AM-PYMNTS**

**A Simpler Vision For Accounts Payable Tech**  
**2016-06-21T01:05:25 MST 1:05 AM-PYMNTS**

**The Short History And Long Future Of The**  
**2016-05-26T17:51:45 MST 5:51 PM-Bank Innovation**

**Bank of America : The five-year proliferation of**  
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2016-02-03T01:22:25 MST 1:22 AM-PRWeb

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## Corporate Linkage

### Subsidiaries (Domestic)

Company	City , State	D-U-N-S® NUMBER
PIRACLE, INC.	SALT LAKE CITY , Utah	78-680-8709

### Branches (Domestic)

Company	City , State	D-U-N-S® NUMBER
AVIDXCHANGE, INC.	HOUSTON , Texas	09-979-2041
AVIDXCHANGE, INC.	SOMERSET , New Jersey	03-266-0449

## Predictive Scores

Currency: Shown in USD unless otherwise indicated **D&B Viability Rating Summary**

The D&B Viability Rating uses D&B's proprietary analytics to compare the most predictive business risk indicators and deliver a highly reliable assessment of the probability that a company will go out of business, become dormant/inactive, or file for bankruptcy/insolvency within the next 12 months. The D&B Viability Rating is made up of 4 components:

**Viability Score**

Lowest Risk:1

Highest Risk:9

**Compared to All US Businesses within the D&B Database:**

- Level of Risk: **Low Risk**
- Businesses ranked 3 have a probability of becoming no longer viable: **3 %**
- Percentage of businesses ranked 3: **15 %**
- Across all US businesses, the average probability of becoming no longer viable: **14 %**

**Portfolio Comparison**

Lowest Risk:1

Highest Risk:9

**Compared to All US Businesses within the same MODEL SEGMENT:**

- Model Segment : **Established Trade Payments**
- Level of Risk: **Low Risk**
- Businesses ranked 4 within this model segment have a probability of becoming no longer viable: **4 %**
- Percentage of businesses ranked 4 with this model segment: **11 %**
- Within this model segment, the average probability of becoming no longer viable: **5 %**

**Data Depth Indicator**

Predictive Data:A

Descriptive Data:G

**Data Depth Indicator:**

- ✓ Rich Firmographics
- ✓ Extensive Commercial Trading Activity
- ✓ Basic Financial Attributes

Greater data depth can increase the precision of the D&B Viability Rating assessment.

**Company Profile****Financial  
Data****Not  
Available****Trade  
Payments****Available  
(3+ Trade)****Company  
Size****Large****Years in  
Business****Established****Company Profile Details:**

- Financial Data: **Not Available**
- Trade Payments: **Available** (3+ Trade)
- Company Size: **Large** (Employees: 50+ or Sales: \$500K+)
- Years in Business: **Established** (5+)

### Credit Capacity Summary

This credit rating was assigned because of D&B's assessment of the company's creditworthiness. For more information, see the D&B Rating Key

**D&B Rating : 1R3**

**Number of employees: 1R** indicates 10 or more employees  
**Composite credit appraisal: 3** is fair

The 1R and 2R ratings categories reflect company size based on the total number of employees for the business. They are assigned to business files that do not contain a current financial statement. In 1R and 2R Ratings, the 2, 3, or 4 creditworthiness indicator is based on analysis by D&B of public filings, trade payments, business age and other important factors. 2 is the highest Composite Credit Appraisal a company not supplying D&B with current financial information can receive.

**Below is an overview of the company's rating history since 12-23-2000**

D&B Rating	Date Applied
1R3	04-10-2007
1R4	01-24-2006
--	10-03-2003
1R4	03-02-2002
--	12-23-2000

**Number of Employees Total:** 132 (UNDETERMINED here)

**Payment Activity:** (based on 54 experiences)  
**Average High Credit:** 8,744  
**Highest Credit:** 90,000  
**Total Highest Credit:** 428,250

### D&B Credit Limit Recommendation

**Conservative credit Limit** 80,000  
**Aggressive credit Limit:** 200,000

**Risk category for this business :** **LOW**

The Credit Limit Recommendation (CLR) is intended to serve as a directional benchmark for all businesses within the same line of business or industry, and is not calculated based on any individual business. Thus, the CLR is intended to help guide the credit limit decision, and must be balanced in combination with other elements which reflect the individual company's size, financial strength, payment history, and credit worthiness, all of which can be derived from D&B reports. Risk is assessed using D&B's scoring methodology and is one factor used to create the recommended limits. See Help for details.

### Financial Stress Class Summary

The Financial Stress Score predicts the likelihood of a firm ceasing business without paying all creditors in full, or reorganization or obtaining relief from creditors under state/federal law over the next 12 months. Scores were calculated using a statistically valid model derived from D&B's extensive data files. The Financial Stress Class of 4 for this company shows that firms with this class had a failure rate of 0.84% (84 per 10,000), which is 1.75 times higher than the average of businesses in D & B's database.

**Financial Stress Class : 4** 

(Lowest Risk:1; Highest Risk:5)

Moderately higher than average risk of severe financial stress, such as a bankruptcy or going out of business with unpaid debt, over the next 12 months.

#### Probability of Failure:

Risk of Severe Financial Stress for Businesses with this Class: 0.84 % (84 per 10,000)  
 Financial Stress National Percentile : 32 (Highest Risk: 1; Lowest Risk: 100)  
 Financial Stress Score : 1446 (Highest Risk: 1,001; Lowest Risk: 1,875)  
 Average Risk of Severe Financial Stress for Businesses in D&B database: 0.48 % (48 per 10,000)

The Financial Stress Class of this business is based on the following factors:



Composite credit appraisal is rated fair.  
 UCC Filings reported.  
 High number of inquiries to D & B over last 12 months.  
 Low proportion of satisfactory payment experiences to total payment experiences.  
 High proportion of past due balances to total amount owing.  
 Unstable Paydex over last 12 months.

**Notes:**

The Financial Stress Class indicates that this firm shares some of the same business and financial characteristics of other companies with this classification. It does not mean the firm will necessarily experience financial stress.  
 The Probability of Failure shows the percentage of firms in a given Class that discontinued operations over the past year with loss to creditors. The Probability of Failure - National Average represents the national failure rate and is provided for comparative purposes.  
 The Financial Stress National Percentile reflects the relative ranking of a company among all scorable companies in D&B's file.  
 The Financial Stress Score offers a more precise measure of the level of risk than the Class and Percentile. It is especially helpful to customers using a scorecard approach to determining overall business performance.

Norms	National %
This Business	32
Region: SOUTH ATLANTIC	48
Industry: BUSINESS, LEGAL AND ENGINEERING SERVICES	52
Employee range: 100-499	75
Years in Business: 11-25	68

This Business has a Financial Stress Percentile that shows:

- Higher risk than other companies in the same region.
- Higher risk than other companies in the same industry.
- Higher risk than other companies in the same employee size range.
- Higher risk than other companies with a comparable number of years in business.

**Credit Score Summary**

The Commercial Credit Score (CCS) predicts the likelihood of a business paying its bills in a severely delinquent manner (91 days or more past terms). The Credit Score class of 1 for this company shows that 1.1% of firms with this class paid one or more bills severely delinquent, which is lower than the average of businesses in D & B's database.

**Credit Score Class : 1** 

Lowest Risk:1;Highest Risk :5

**Incidence of Delinquent Payment**

Among Companies with this Classification: 1.10 %  
 Average compared to businesses in D&B's database: 10.20 %  
 Credit Score Percentile : 91 (Highest Risk: 1; Lowest Risk: 100)  
 Credit Score : 580 (Highest Risk: 101; Lowest Risk:670)

**The Credit Score Class of this business is based on the following factors:**

Proportion of past due balances to total amount owing  
 Higher risk industry based on delinquency rates for this industry

**Notes:**

The Commercial Credit Score Risk Class indicates that this firm shares some of the same business and financial characteristics of other companies with this classification. It does not mean the firm will necessarily experience severe delinquency.  
 The Incidence of Delinquent Payment is the percentage of companies with this classification that were reported 91 days past due or more by creditors. The calculation of this value is based on D&B's trade payment database.  
 The Commercial Credit Score percentile reflects the relative ranking of a firm among all scorable companies in D&B's file.  
 The Commercial Credit Score offers a more precise measure of the level of risk than the Risk Class and Percentile. It is especially helpful to customers using a scorecard approach to determining overall business performance.

Norms	National %
This Business	91
Region: SOUTH ATLANTIC	43
Industry: BUSINESS, LEGAL AND ENGINEERING SERVICES	43

Norms	National %
Employee range: 100-499	89
Years in Business: 11-25	66

This business has a Credit Score Percentile that shows:

- Lower risk than other companies in the same region.
- Lower risk than other companies in the same industry.
- Lower risk than other companies in the same employee size range.
- Lower risk than other companies with a comparable number of years in business.

## Trade Payments

Currency: Shown in USD unless otherwise indicated 

### D&B PAYDEX®

The D&B PAYDEX is a unique, weighted indicator of payment performance based on payment experiences as reported to D&B by trade references. Learn more about the D&B PAYDEX

Timeliness of historical payments for this company.

Current PAYDEX is	70	Equal to 15 days beyond terms ( Pays more slowly than the average for its industry of 6 days beyond terms )
Industry Median is	76	Equal to 6 days beyond terms
Payment Trend currently is	↔	Unchanged, compared to payments three months ago

Indications of slowness can be the result of dispute over merchandise, skipped invoices etc. Accounts are sometimes placed for collection even though the existence or amount of the debt is disputed.

Total payment Experiences in D&Bs File (HQ)	54
Payments Within Terms (not weighted)	84 %
Trade Experiences with Slow or Negative Payments(%)	20.37%
Total Placed For Collection	0
High Credit Average	8,744
Largest High Credit	90,000
Highest Now Owing	30,000
Highest Past Due	250

### D&B PAYDEX® : 70 ↗

(Lowest Risk:100; Highest Risk:1)

When weighted by amount, payments to suppliers average 15 days beyond terms

### 3-Month D&B PAYDEX® : 79 ↗

(Lowest Risk:100; Highest Risk:1)

Based on payments collected over last 3 months.

When weighted by amount, payments to suppliers average 2 days beyond terms

### D&B PAYDEX® Comparison

Current Year

PAYDEX® of this Business compared to the Primary Industry from each of the last four quarters. The Primary Industry is Custom computer programing , based on SIC code 7371 .

**Shows the trend in D&B PAYDEX scoring over the past 12 months.**

	8/15	9/15	10/15	11/15	12/15	1/16	2/16	3/16	4/16	5/16	6/16	7/16
<b>This Business</b>	68	70	74	74	73	70	65	66	67	67	66	70
<b>Industry Quartiles</b>												
Upper	.	80	.	.	80	.	.	80	.	.	80	.
Median	.	76	.	.	76	.	.	76	.	.	76	.
Lower	.	69	.	.	69	.	.	69	.	.	69	.

Current PAYDEX for this Business is 70 , or equal to 15 days beyond terms  
 The 12-month high is 74 , or equal to 9 DAYS BEYOND terms  
 The 12-month low is 65 , or equal to 19 DAYS BEYOND terms

**Previous Year**

Shows PAYDEX of this Business compared to the Primary Industry from each of the last four quarters. The Primary Industry is Custom computer programming , based on SIC code 7371 .

Previous Year	09/14 Q3'14	12/14 Q4'14	03/15 Q1'15	06/15 Q2'15
<b>This Business</b>	74	71	73	67
<b>Industry Quartiles</b>				
Upper	80	80	80	80
Median	77	76	77	77
Lower	69	69	70	69

Based on payments collected over the last 4 quarters.

Current PAYDEX for this Business is 70 , or equal to 15 days beyond terms  
 The present industry median Score is 76 , or equal to 6 days beyond terms  
 Industry upper quartile represents the performance of the payers in the 75th percentile  
 Industry lower quartile represents the performance of the payers in the 25th percentile

**Payment Habits**

For all payment experiences within a given amount of credit extended, shows the percent that this Business paid within terms. Provides number of experiences to calculate the percentage, and the total credit value of the credit extended.

\$ Credit Extended	# Payment Experiences	Total Amount	% of Payments Within Terms
Over 100,000	0	0	0%
50,000-100,000	1	90,000	0%
15,000-49,999	8	220,000	97%
5,000-14,999	10	77,500	87%
1,000-4,999	15	27,000	82%
Under 1,000	14	5,250	84%

Based on payments collected over last 24 months.

All Payment experiences reflect how bills are paid in relation to the terms granted. In some instances, payment beyond terms can be the result of disputes over merchandise, skipped invoices etc.

**Payment Summary**

- There are 54 payment experience(s) in D&Bs file for the most recent 24 months, with 43 experience(s) reported during the last three month period.
- The highest Now Owes on file is 30,000 . The highest Past Due on file is 250

Below is an overview of the companys currency-weighted payments, segmented by its suppliers primary industries:

	Total Rev'd (#)	Total Amts	Largest High Credit	Within Terms (%)	Days Slow <31 31-60 61-90 90> (%) (%) (%) (%)			
Top Industries								
Misc business service	9	74,600	30,000	87	13	0	0	0
Misc business credit	7	5,500	2,500	95	5	0	0	0
Security broker/deal	5	21,000	10,000	100	0	0	0	0
Telephone communictns	3	16,000	15,000	53	47	0	0	0
Management services	3	8,000	5,000	100	0	0	0	0
Mfg computers	2	42,500	40,000	100	0	0	0	0
Radiotelephone commun	2	55,000	30,000	100	0	0	0	0
Nonclassified	2	32,500	30,000	92	8	0	0	0
Short-trm busn credit	2	25,000	20,000	100	0	0	0	0
Whol computers/softwr	1	90,000	90,000	0	0	100	0	0
Ret mail-order house	1	30,000	30,000	100	0	0	0	0
Computer system desgn	1	10,000	10,000	100	0	0	0	0
Personal credit	1	2,500	2,500	100	0	0	0	0
Help supply service	1	2,500	2,500	50	50	0	0	0
Whol office equipment	1	1,000	1,000	50	0	50	0	0
Misc equipment rental	1	1,000	1,000	100	0	0	0	0
Data processing svcs	1	1,000	1,000	50	0	50	0	0
Whol hardware	1	750	750	100	0	0	0	0
Lithographic printing	1	250	250	100	0	0	0	0
Trucking non-local	1	250	250	0	100	0	0	0
Investment advice	1	250	250	0	100	0	0	0
Whol chemicals	1	100	100	0	50	0	0	50
Mfg misc office eqpt	1	50	50	100	0	0	0	0
Other payment categories								
Cash experiences	3	750	750					
Payment record unknown	2	7,750	7,500					
Unfavorable comments	0	0	0					
Placed for collections	0	N/A	0					
Total in D&B's file	54	428,250	90,000					

Accounts are sometimes placed for collection even though the existence or amount of the debt is disputed.

Indications of slowness can be result of dispute over merchandise, skipped invoices etc.

#### Detailed payment history for this company

Date Reported (mm/yy)	Paying Record	High Credit	Now Owes	Past Due	Selling Terms	Last Sale Within (month)
07/16	Ppt	30,000	30,000	0		1 mo
	Ppt	2,500	2,500	0		1 mo
06/16	Ppt		1,000	0		1 mo
	Ppt		0	0		2-3 mos
	Ppt		750	0		1 mo
	Ppt		500	0		1 mo
	Ppt	40,000	0	0		6-12 mos
	Ppt	30,000	0	0		1 mo
	Ppt	30,000	10,000	0		1 mo
	Ppt	30,000	0	0		2-3 mos
	Ppt	25,000	25,000	0		1 mo
	Ppt	20,000	1,000	0		1 mo

	Ppt	10,000	5,000	0	N30	1 mo
	Ppt	10,000	10,000	0		1 mo
	Ppt	7,500	7,500	0		1 mo
	Ppt	7,500	5,000	0		1 mo
	Ppt	7,500	2,500	0		1 mo
	Ppt	5,000	0	0		6-12 mos
	Ppt	5,000	5,000	0	N30	1 mo
	Ppt	2,500	2,500	0		1 mo
	Ppt	2,500	0	0		4-5 mos
	Ppt	2,500	2,500	0	N30	1 mo
	Ppt	2,500	0	0		2-3 mos
	Ppt	2,500	0	0	N30	2-3 mos
	Ppt	1,000	1,000	0	N30	1 mo
	Ppt	1,000	500	0		1 mo
	Ppt	1,000	500	0		1 mo
	Ppt	750	0	0		1 mo
	Ppt	750	0	0		6-12 mos
	Ppt	500	0	0		4-5 mos
	Ppt	250	100	0		1 mo
	Ppt	250				1 mo
	Ppt	100	0	0		2-3 mos
	Ppt-Slow 60	1,000	250	250		1 mo
	Slow 20	250	0	0		2-3 mos
	Slow 30	10,000	0	0		6-12 mos
	Slow 30	250	250	250	Lease Agreemnt	6-12 mos
	(038)	250	250	0	N30	1 mo
	(038)	0	0	0	Cash account	1 mo
	(040)	0	0	0	Cash account	6-12 mos
05/16	Ppt-Slow 30	2,500	0	0		6-12 mos
	(042)	750			Cash account	1 mo
04/16	(043)	7,500	0	0		6-12 mos
03/16	Ppt	1,000	100		Lease Agreemnt	
	Ppt	50	0	0	N30	1 mo
	Ppt-Slow 60	1,000	750	0		1 mo
02/16	Ppt	500	0	0		6-12 mos
01/16	Slow 60	90,000	0	0	N30	6-12 mos
08/15	Slow 30-180	100	0	0		6-12 mos
04/15	Ppt	10,000	0	0	N30	6-12 mos
03/15	Ppt	5,000	0	0		6-12 mos
	Slow 30	2,500	0	0		6-12 mos
09/14	Ppt-Slow 30	15,000	7,500	50		1 mo
	Slow 30	250	0	0		6-12 mos

Payments Detail Key: red - 30 or more days beyond terms

Payment experiences reflect how bills are paid in relation to the terms granted. In some instances payment beyond terms can be the result of disputes over merchandise, skipped invoices, etc. Each experience shown is from a separate supplier. Updated trade experiences replace those previously reported.

## Public Filings

Currency: Shown in USD unless otherwise indicated 

## Summary

The following data includes both open and closed filings found in D&B's database on this company.

Record Type	# of Records	Most Recent Filing Date
Bankruptcy Proceedings	0	-
Judgments	0	-
Liens	0	-
Suits	0	-
UCCs	95	03/03/16

The following Public Filing data is for information purposes only and is not the official record. Certified copies can only be obtained from the official source.

#### UCC Filings

<b>Collateral</b>	All Assets including proceeds and products
<b>Type</b>	Original
<b>Sec. Party</b>	TPG SPECIALTY LENDING, INC., AS COLLATERAL AGENT, NEW YORK, NY
<b>Debtor</b>	AVIDXCHANGE FINANCIAL SERVICES, INC., SOMERSET, NJ
<b>Filing No.</b>	2015 3569414
<b>Filed With</b>	SECRETARY OF STATE/UCC DIVISION, DOVER, DE
<b>Date Filed</b>	2015-08-07
<b>Latest Info Received</b>	09/18/15

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<b>Collateral</b>	All Assets including proceeds and products
<b>Type</b>	Original
<b>Sec. Party</b>	TPG SPECIALTY LENDING, INC., AS COLLATERAL AGENT, NEW YORK, NY
<b>Debtor</b>	AVIDXCHANGE FINANCIAL SERVICES, INC. (THE "CORPORATION"), SOMERSET, NJ
<b>Filing No.</b>	2015 3569380
<b>Filed With</b>	SECRETARY OF STATE/UCC DIVISION, DOVER, DE
<b>Date Filed</b>	2015-08-07
<b>Latest Info Received</b>	09/18/15

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<b>Collateral</b>	All Assets including proceeds and products
<b>Type</b>	Original
<b>Sec. Party</b>	TPG SPECIALTY LENDING, INC., AS COLLATERAL AGENT, NEW YORK, NY
<b>Debtor</b>	AVIDXCHANGE, INC.
<b>Filing No.</b>	2015 3569240
<b>Filed With</b>	SECRETARY OF STATE/UCC DIVISION, DOVER, DE
<b>Date Filed</b>	2015-08-07
<b>Latest Info Received</b>	09/18/15

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<b>Collateral</b>	All Assets including proceeds and products
<b>Type</b>	Original
<b>Sec. Party</b>	TPG SPECIALTY LENDING, INC., AS COLLATERAL AGENT, NEW YORK, NY
<b>Debtor</b>	AVIDXCHANGE, INC. (THE "CORPORATION")
<b>Filing No.</b>	2015 3569141
<b>Filed With</b>	SECRETARY OF STATE/UCC DIVISION, DOVER, DE

**Date Filed** 2015-08-07  
**Latest Info Received** 09/18/15

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**Collateral** Negotiable instruments including proceeds and products - Inventory including proceeds and products - Account(s) including proceeds and products - Assets including proceeds and products - and OTHERS  
**Type** Original  
**Sec. Party** BOATHOUSE CAPITAL II LP, WAYNE, PA  
**Debtor** AVIDXCHANGE, INC.  
**Filing No.** 2015 2513033  
**Filed With** SECRETARY OF STATE/UCC DIVISION, DOVER, DE

**Date Filed** 2015-06-11  
**Latest Info Received** 07/13/15

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**Type** Termination  
**Sec. Party** BOATHOUSE CAPITAL II LP, WAYNE, PA  
**Debtor** AVIDXCHANGE, INC.  
**Filing No.** 2015 3282018  
**Filed With** SECRETARY OF STATE/UCC DIVISION, DOVER, DE

**Date Filed** 2015-07-29  
**Latest Info Received** 09/29/15  
**Original UCC Filed Date** 2015-06-11  
**Original Filing No.** 2015 2513033

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**Collateral** Negotiable instruments including proceeds and products - Inventory including proceeds and products - Account(s) including proceeds and products - Assets including proceeds and products - and OTHERS  
**Type** Original  
**Sec. Party** BOATHOUSE CAPITAL LP, WAYNE, PA  
**Debtor** AVIDXCHANGE, INC.  
**Filing No.** 2012 2543835  
**Filed With** SECRETARY OF STATE/UCC DIVISION, DOVER, DE

**Date Filed** 2012-07-02  
**Latest Info Received** 07/25/12

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**Type** Termination  
**Sec. Party** BOATHOUSE CAPITAL LP, WAYNE, PA  
**Debtor** AVIDXCHANGE, INC.  
**Filing No.** 2015 3281937  
**Filed With** SECRETARY OF STATE/UCC DIVISION, DOVER, DE

**Date Filed** 2015-07-29  
**Latest Info Received** 09/29/15  
**Original UCC Filed Date** 2012-07-02  
**Original Filing No.** 2012 2543835

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<b>Collateral</b>	Negotiable instruments including proceeds and products - Inventory including proceeds and products - Account(s) including proceeds and products - Assets including proceeds and products - and OTHERS
<b>Type</b>	Original
<b>Sec. Party</b>	BOATHOUSE CAPITAL LP, WAYNE, PA
<b>Debtor</b>	AVIDXCHANGE, INC.
<b>Filing No.</b>	2010 4108878
<b>Filed With</b>	SECRETARY OF STATE/UCC DIVISION, DOVER, DE
<b>Date Filed</b>	2010-11-22
<b>Latest Info Received</b>	12/15/10

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<b>Type</b>	Termination
<b>Sec. Party</b>	BOATHOUSE CAPITAL LP, WAYNE, PA
<b>Debtor</b>	AVIDXCHANGE, INC.
<b>Filing No.</b>	2015 3281903
<b>Filed With</b>	SECRETARY OF STATE/UCC DIVISION, DOVER, DE
<b>Date Filed</b>	2015-07-29
<b>Latest Info Received</b>	09/29/15
<b>Original UCC Filed Date</b>	2010-11-22
<b>Original Filing No.</b>	2010 4108878

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<b>Collateral</b>	Negotiable instruments and proceeds - General intangibles(s) and proceeds
<b>Type</b>	Original
<b>Sec. Party</b>	BOATHOUSE CAPITAL II LP, WAYNE, PA
<b>Debtor</b>	AVIDXCHANGE, INC.
<b>Filing No.</b>	2015 2513074
<b>Filed With</b>	SECRETARY OF STATE/UCC DIVISION, DOVER, DE
<b>Date Filed</b>	2015-06-11
<b>Latest Info Received</b>	07/13/15

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<b>Type</b>	Termination
<b>Sec. Party</b>	BOATHOUSE CAPITAL II LP, WAYNE, PA
<b>Debtor</b>	AVIDXCHANGE, INC.
<b>Filing No.</b>	2015 3282083
<b>Filed With</b>	SECRETARY OF STATE/UCC DIVISION, DOVER, DE
<b>Date Filed</b>	2015-07-29
<b>Latest Info Received</b>	09/29/15
<b>Original UCC Filed Date</b>	2015-06-11
<b>Original Filing No.</b>	2015 2513074

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<b>Collateral</b>	Negotiable instruments and proceeds - General intangibles(s) and proceeds
<b>Type</b>	Original
<b>Sec. Party</b>	FINANCIAL TECHNOLOGY PARTNERS LP, SAN FRANCISCO, CA
<b>Debtor</b>	PRAEGER, MICHAEL SCOTT
<b>Filing No.</b>	20120094000K
<b>Filed With</b>	SECRETARY OF STATE/UCC DIVISION, RALEIGH, NC
<b>Date Filed</b>	2012-10-08
<b>Latest Info Received</b>	10/23/12

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<b>Collateral</b>	Negotiable instruments and proceeds - General intangibles(s) and proceeds
<b>Type</b>	Original
<b>Sec. Party</b>	BOATHOUSE CAPITAL LP, WAYNE, PA
<b>Debtor</b>	AVIDXCHANGE, INC.
<b>Filing No.</b>	2012 2543876
<b>Filed With</b>	SECRETARY OF STATE/UCC DIVISION, DOVER, DE
<b>Date Filed</b>	2012-07-02
<b>Latest Info Received</b>	07/25/12

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<b>Type</b>	Termination
<b>Sec. Party</b>	BOATHOUSE CAPITAL LP, WAYNE, PA
<b>Debtor</b>	AVIDXCHANGE, INC.
<b>Filing No.</b>	2015 3281978
<b>Filed With</b>	SECRETARY OF STATE/UCC DIVISION, DOVER, DE
<b>Date Filed</b>	2015-07-29
<b>Latest Info Received</b>	09/29/15
<b>Original UCC Filed Date</b>	2012-07-02
<b>Original Filing No.</b>	2012 2543876

There are additional UCCs in D&Bs file on this company available by contacting 1-800-234-3867 .

## Government Activity

### Activity summary

Borrower (Dir/Guar)	NO
Administrative Debt	NO
Contractor	NO
Grantee	NO
Party excluded from federal program(s)	NO

### Possible candidate for socio-economic program consideration

Labour Surplus Area	N/A
Small Business	YES (2015)
8(A) firm	N/A

The details provided in the Government Activity section are as reported to Dun & Bradstreet by the federal government and other sources.

## History & Operations

Currency: Shown in USD unless otherwise indicated 

### Company Overview

<b>Company Name:</b>	AVIDXCHANGE, INC.
<b>Street Address:</b>	1111 Metropolitan Ave Ste 650 Charlotte , NC 28204
<b>Phone:</b>	704 971-8160 
<b>Fax:</b>	704-971-8172 
<b>URL:</b>	<a href="http://www.avidxchange.com">http://www.avidxchange.com</a>
<b>History</b>	Is clear
<b>Present management control</b>	16 years

### History

The following information was reported: **05/25/2016**

**Officer(s):** MICHAEL PRAEGER, CEO  
DAVID MILLER, PRES  
JAY PLUEGER, V PRES  
PAUL KELLY, SR V PRES

**DIRECTOR(S) :** THE OFFICER(S)

The Delaware Secretary of State's business registrations file showed that Avidxchange, Inc. was registered as a Corporation on.

April 12, 2000.

Business started 2000. 30% of capital stock is owned by Michael Praeger. 30% of capital stock is owned by David Miller. 15% of capital stock is owned by CT Communications. 6% of capital stock is owned by Charlotte Angel Partners, LLC.

#### RECENT EVENT :

On June 5, 2015, sources stated that AvidXchange, Inc., Charlotte, NC, has acquired substantially all of the assets of Strongroom Solutions LLC, Houston, TX, on May 19, 2015. With the acquisition, Strongroom Solutions LLC has ceased to exist and would now be a division of AvidXchange, Inc. Terms were undisclosed.

On January 13, 2015, Stefani Hult, AR Mgr, stated that Avidxchange Inc., Charlotte, NC acquired Piracle Inc., Salt Lake City, UT, on November 20, 2014. With this acquisition, Piracle Inc. became a subsidiary of Avidxchange Inc.. Terms and payments were not disclosed. Further details are undetermined.

MICHAEL PRAEGER. Antecedents are unknown.

DAVID MILLER. Antecedents are unknown.



JAY PLUEGER. 17 years of sales, account management.

PAUL KELLY. Antecedents are unknown.

Business address has changed from 9735a Northcross Center Court, Huntersville, NC, 28078 to 4421 Stuart Andrew Blvd Ste 200, Charlotte, NC, 28217.

### Operations

**05/25/2016**

**Description:** Provides computer programming services, specializing in software development (100%).  
ADDITIONAL TELEPHONE NUMBER(S): Facsimile (Fax) 704 971-8172 . Toll-Free 800 560-9305 .  
Has 30 account(s). Terms are contractual basis. Sells to commercial concerns. Territory : Undetermined.

**Employees:** 132 which includes officer(s). UNDETERMINED employed here.

**Facilities:** Leases 7,500 sq. ft. on 2nd floor of a six story brick building.

**Branches:** This business has multiple branches, detailed branch/division information is available in Dun & Bradstreets linkage or family tree products.  
This business has 1 subsidiaries listed below.

**Subsidiaries:** Piracle, Inc. (100%) chartered 1991. Operates as a payment solution software.

## SIC & NAICS

### SIC:

Based on information in our file, D&B has assigned this company an extended 8-digit SIC. D&B's use of 8-digit SICs enables us to be more specific about a company's operations than if we use the standard 4-digit code.

The 4-digit SIC numbers link to the description on the Occupational Safety & Health Administration (OSHA) Web site. Links open in a new browser window.

7371 0301 Computer software development

### NAICS:

541511 Custom Computer Programming Services

## Financials

### Company Financials: D&B

### Additional Financial Data

D & B has updated this report using available sources.

### Key Business Ratios

D & B has been unable to obtain sufficient financial information from this company to calculate business ratios. Our check of additional outside sources also found no information available on its financial performance.

To help you in this instance, ratios for other firms in the same industry are provided below to support your analysis of this business.

#### Based on this Number of Establishments

44

#### Industry Norms Based On 44 Establishments

	This Business	Industry Median	Industry Quartile
<b>Profitability</b>			
Return on Sales %	UN	( 0.5)	UN
Return on Net Worth %	UN	( 0.4)	UN
<b>Short-Term Solvency</b>			
Current Ratio	UN	2.3	UN

	This Business	Industry Median	Industry Quartile
Quick Ratio	UN	1.8	UN
Efficiency			
Assets to Sales %	UN	150.1	UN
Sales / Net Working Capital	UN	2.3	UN
Utilization			
Total Liabilities / Net Worth (%)	UN	66.0	UN

UN = Unavailable

### Detailed Trade Risk Insight™

Detailed Trade Risk Insight provides detailed updates on over 1.5 billion commercial trade experiences collected from more than 260 million unique supplier/purchaser relationships.

#### Days Beyond Terms - Past 3 & 12 Months

**3 months** from May 16 to Jul 16



Dollar-weighted average of 20 payment experiences reported from 9 companies

#### Derogatory Events Last 13 Months from Jul 15 to Jul 16

**12 months** from Aug 15 to Jul 16



Dollar-weighted average of 33 payment experiences reported from 18 companies

No Derogatory trade Event has been reported on this company for the past 13 Months

#### Total Amount Current and Past Due - 13 month trend from Jul 15 to Jul 16

Status	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16
<b>Total</b>	116,651	92,466	101,357	117,351	96,981	80,049	68,484	65,256	84,427	64,089	86,090	95,049	116,530
<b>Current</b>	77,781	63,838	72,729	93,012	67,437	74,845	68,484	63,100	82,271	61,933	83,536	95,049	116,530
<b>1-30 Days Past Due</b>	4,316	3,800	3,800	-	-	-	-	2,156	-	-	398	-	-
<b>31-60 Days Past Due</b>	24,366	24,828	24,828	24,339	29,544	5,201	-	-	2,156	-	-	-	-
<b>61-90 Days Past Due</b>	470	-	-	-	-	-	-	-	-	2,156	-	-	-
<b>90+ Days Past Due</b>	9,718	-	-	-	-	3	-	-	-	-	2,156	-	-

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## Exhibit C-8 “Bankruptcy Information”

### AvidXchange, Inc.

AvidXchange, Inc. or any of its affiliates have had **no** reorganization, protection from creditors or any form of bankruptcy filings in the last two (2) years preceding this application. Similarly, **no** officers of AvidXchange or its affiliates have had any reorganization, protection from creditors or any form of bankruptcy filings in the last two (2) years preceding this application.

## Exhibit C-9 “Merger Information”

### AvidXchange, Inc.

There has been no dissolution, merger or acquisition of AvidXchange, Inc. within the most recent five (5) years preceding this application. As this is AvidXchange’s initial application for certification, it does not have any previous certification for the brokering of natural gas services in the state of Ohio.

# Exhibit D-1 “Operations”

## AvidXchange, Inc.

AvidXchange, Inc. improves the way companies pay their bills by providing a solution that streamlines the Accounts Payable process – from invoice receipt through vendor payment. AvidXchange's solutions are SaaS based, which means that there is one platform for clients to login to for access to invoice and payment data.

In addition to its bill payment processes, for a small sub-segment of its clients, AvidXchange audits and analyzes client invoices for any errors, overcharges, unfavorable pricing/terms or duplicate payments. As part of this service, AvidXchange negotiates its clients' third-party electricity and natural gas supply agreements.

## Exhibit D-2 “Operations Expertise”

### AvidXchange, Inc.

Since its founding in 2000, AvidXchange, Inc. has grown to service over 5,000 clients nationwide employing over 700 individuals.

AvidXchange adheres to the highest ethical standards and is considered as one of the nation's leading accounts payable automation companies. Our personnel are provided with hands on training and experience not only in facilitating our client's accounts payable process, but also in serving the clients' needs and meeting their expectations.

AvidXchange's utility auditing and procurement is headed by Robert Macksoud who has over 20 years' experience in the energy field having assisted thousands of commercial and industrial customers in the procurement of their energy requirements. Mr. Macksoud is a Certified Energy Procurement Professional having achieved this distinction by the AEE in 2012. As evidence of AvidXchange's expertise in its operations as it related to natural gas brokering, please find the resume of Robert Macksoud attached to Exhibit B-3.



## Exhibit D-3 “Key Technical Personnel”

### AvidXchange, Inc.

AvidXchange employs two (2) employees who are experts in the field of natural gas bill auditing and procurement. Please find the resumes of Robert Macksoud and Vanessa Markota detailing contact information as requested in Exhibit B-3.