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**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
VOLOGY, INC.
P01000114575
(Document Number of Corporation)**

In accordance with Section 607.1007, *Florida Statutes*, the Articles of Incorporation of **VOLOGY, INC**, a Florida corporation (the "**Corporation**"), are hereby amended and restated (such Amended and Restated Articles of Incorporation to be referred to herein as the "**Articles of Incorporation**") to read in their entirety as follows:

**Article 1
Name**

The name of the Corporation is Vology, Inc.

**Article 2
Principal Office and Mailing Address**

The street address of the Corporation's principal office and mailing address is 4027 Tampa Road, Suite 3900, Oldsmar, Florida 34677.

**Article 3
Business and Activities**

The Corporation may, and is authorized to, engage in any activity or business now or hereafter permitted under the laws of the United States and of the State of Florida.

**Article 4
Capital Stock**

The Corporation shall have two classes of capital stock ("**Capital Stock**"): Common Stock, par value \$0.0001 per share ("**Common Stock**"), and Preferred Stock, par value \$0.0001 per share (the "**Preferred Stock**"). The total authorized number of shares of each class of Capital Stock is 50,000,000 shares of Common Stock and 10,985,602 shares of Preferred Stock.

A description of each class and series of Capital Stock of the Corporation and the powers, designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof is as follows:

A. COMMON STOCK.

1. **General.** The voting, dividend, liquidation and other rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of each series of Preferred Stock outstanding from time to time.

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2. **Voting.** The holders of the Common Stock are entitled to one vote for each share held at all meetings of shareholders (and written actions in lieu of meetings), provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Articles of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Articles of Incorporation or pursuant to the Florida Business Corporation Act.

B. PREFERRED STOCK.

1. **Designation of Series A-1 Preferred Stock.** 5,492,801 shares of the Preferred Stock shall be designated "Series A-1 Convertible Participating Preferred Stock" (the "Series A-1 Convertible Preferred Stock") and 5,492,801 shares of Preferred Stock shall be designated "Series A-1 Redeemable Preferred Stock" (the "Series A-1 Redeemable Preferred Stock" and collectively with the Series A-1 Convertible Preferred Stock, the "Series A-1 Preferred Stock").

2. Dividends.

2.1 Dividends on the Series A-1 Preferred Stock.

(a) The holders of Series A-1 Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors (the "Board"), and as otherwise provided in these Articles of Incorporation, out of funds legally available therefor, a dividend at the Applicable Dividend Rate, compounded annually, of the Base Amount (as hereinafter defined) of each share of Series A-1 Preferred Stock from and including the date of issuance of such share to and including the day on which the Series A-1 Liquidation Value (as hereinafter defined) of such share is paid. Such dividends shall accrue from day to day, whether or not earned or declared, on each issued and outstanding share of Series A-1 Preferred Stock, and shall be cumulative; provided, however that except as set forth in (i) Section 2.2 or Section 4 below or (ii) Section 3 of the Investor Rights Agreement (as hereinafter defined), such dividends shall be payable only when, as and if declared by the Board of Directors and the Corporation shall be under no obligation to pay such dividends. The date on which the Corporation initially issues any share of Series A-1 Preferred Stock will be deemed to be its "date of issuance" regardless of the number of times the transfer of such share is made on the stock records of the Corporation and regardless of the number of certificates that may be issued to evidence such share, and the date on which the Corporation initially issued any share of Series A-1 Redeemable Preferred Stock shall be deemed to be the date of issuance of the share of Series A-1 Convertible Preferred Stock from which such share of Series A-1 Redeemable Preferred Stock was converted.

(b) If declared by the Board, dividends on each outstanding share of Series A-1 Preferred Stock shall be paid on each anniversary of the date of issuance of such share (the "Dividend Reference Dates").

(c) Any dividends that accrue on any share of Series A-1 Preferred Stock during the one-year period ending upon such Dividend Reference Date that are not paid on such Dividend Reference Date shall automatically be added to the Base Amount of such share and will remain a part thereof until such dividends are paid, at which time the Base Amount shall be reduced by such payment.

(d) The "Base Amount" of a share of Series A-1 Preferred Stock as of any particular date shall be an amount equal to the sum of the Original Series A-1 Purchase Price (as

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hereinafter defined) for such share plus any unpaid dividends on such share added to the Base Amount of such share as provided above and not thereafter paid (appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or the like). In the case of shares of Series A-1 Redeemable Preferred Stock, the Base Amount on the date such share is issued shall be the Base Amount of the share of Series A-1 Convertible Preferred from which such share of Series A-1 Redeemable Preferred Stock was converted.

(e) The "Original Series A -1 Purchase Price" is \$1.3654 per share of Series A-1 Preferred Stock (subject to adjustment for stock splits, dividends, combinations, recapitalizations, reclassifications and the like).

(f) The "Applicable Dividend Rate" means 10%, provided that upon the occurrence of a Dividend Increase Event, as defined in the Investor Rights Agreement, such rate will increase to 20% and, on the one-year anniversary of such occurrence, will increase by an additional 2% and then, on each three month anniversary thereafter, will increase by an additional 2%, up to a maximum of 30% (i.e., the rate will equal 30% at the two-year anniversary of a Dividend Increase Event), until the Dividend Increase Event is cured. In no event will the rate exceed the maximum dividend rate legally permitted in Florida.

2.2. Priority of Dividends. No dividends may be paid on the Common Stock or any other series of Preferred Stock until all accrued but unpaid dividends on the outstanding shares of Series A-1 Preferred Stock have been paid in full. All dividends and distributions (other than liquidating distributions contemplated by Section 4) on the Common Stock shall be made pro rata among the holders of Common Stock and the holders of the Series A-1 Convertible Preferred Stock in proportion to the number of shares held by such holders, treating the shares of Series A-1 Convertible Preferred Stock for this purpose as the number of shares of Common Stock into which such shares are then convertible. Any dividend payable in shares of Common Stock shall not be deemed to be a distribution of property pursuant to this Section 2 if the applicable Series A-1 Conversion Price (as hereinafter defined) for each series of Series A-1 Convertible Preferred Stock is adjusted pursuant to Section 5.3(b) as a result of such dividend.

3. Voting Rights. On all matters to be voted on by the shareholders of the Corporation at a meeting of shareholders (and for all actions by written consent of shareholders), the following provisions shall apply:

3.1 Series A-1 Convertible Preferred Stock and Common Stock Vote as a Single Class. Except as required by law, the holders of Series A-1 Convertible Preferred Stock and the holders of Common Stock shall vote together as a single class on all matters to be voted on by the shareholders, and for this purpose the holders of shares of Series A-1 Convertible Preferred Stock shall have the number of votes to which such holders would be entitled if such holders converted their shares of Series A-1 Convertible Preferred Stock into shares of Common Stock. Except as required by law or as provided in Section 3.2 below, the shares of Series A-2 Redeemable Preferred Stock shall be non-voting.

3.2 Series A-1 Preferred Stock Class Voting Rights. In addition to the voting rights provided by law and by the previous Section, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without the affirmative vote or written consent of the holders of a majority of the outstanding shares of the Series A-1 Convertible Preferred Stock and the Series A-1 Redeemable Preferred Stock, voting as separate classes:

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(a) increase or decrease the number of authorized shares of any class or series of Capital Stock, or amend, alter or change the powers, preferences or rights of any class or series of Capital Stock or the qualifications, limitations or restrictions thereof;

(b) amend, alter or repeal its Articles of Incorporation (other than to create a junior class or series of Capital Stock permitted by Section 3.2(c)), or amend, alter or repeal its By-laws;

(c) create or authorize the creation of, or obligate itself to issue, any (i) additional class, series or share of Capital Stock that is senior to or *pari passu* with, or more advantageous to the holder in any way than, the Series A-1 Preferred Stock on dividends, distributions, liquidation, redemptions or any other matter or that has any separate or disproportionate voting or approval rights, or (ii) option, warrant, convertible security, indebtedness or other right, directly or indirectly, exercisable or exchangeable for or convertible into any such class, series or share of Capital Stock, unless all or a portion of the proceeds thereof are immediately used by the Corporation to purchase the Call Securities (as defined in Section 3(e) of the Investor Rights Agreement) in full; or

(d) breach or otherwise fail to comply with any of the covenants in favor of the holders of Series A-1 Preferred Stock contained in Sections 1 or 2 of the Investor Rights Agreement, dated on or about the date hereof, by and among the Corporation and the other parties named therein (as amended, modified, supplemented, restated or replaced from time to time, the "Investor Rights Agreement").

4. Liquidation.

4.1 **Liquidation Preferences.** Upon any liquidation, dissolution or winding up of the Corporation (a "Liquidity Event"), whether voluntary or involuntary, the Corporation shall make distributions to its shareholders of all cash and other assets of the Corporation legally available for distribution in the following order and priority:

(a) First, ratably among the holders of the Series A-1 Preferred Stock until the holders of Series A-1 Preferred Stock have received under this Section 4.1(a) an aggregate amount per share equal to all accrued but unpaid dividends thereon (including all dividends that were previously added to the Base Amount of such share), whether or not declared.

(b) Second, ratably among the holders of the Series A-1 Preferred Stock until the holders of the Series A-1 Preferred Stock have received under this Section 4.1(b) an amount per share equal to the Original Series A-1 Purchase Price of such share.

(c) Third, ratably among the holders of the Common Stock and the holders of the Series A-1 Convertible Preferred Stock (treating each share of Series A-1 Convertible Preferred Stock as the number of shares of Common Stock into which it is then convertible).

If upon a Liquidity Event, the assets to be distributed pursuant to Sections 4.1(a) or (b), respectively, shall be insufficient to permit payment to the applicable holders of Capital Stock their full liquidation amounts required by such Section, then all of the assets of the Corporation then remaining shall be distributed ratably to such holders in proportion to the full liquidation amounts that would otherwise be payable under such Section. The aggregate payments in respect of a share of Series A-1 Preferred Stock under this Section 4 is sometimes referred to as its "Series A-1 Liquidation Value."

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4.2 Treatment of Certain Transactions. The occurrence of a (i) sale, disposition or other transfer of all or substantially all of the assets of the Corporation, (ii) consolidation or merger of the Corporation, or (iii) sale or other transfer of Capital Stock of the Corporation, in each case in one transaction or a series of related transactions, resulting in the beneficial holders of the Corporation's outstanding Common Stock (calculated on an as-converted and fully-diluted basis) immediately prior to such transaction(s) holding immediately after such transaction(s) less than a majority of the Corporation's outstanding Common Stock (calculated as aforesaid), or, in the case of an asset sale or a consolidation or merger where the Corporation is not the surviving entity, less than a majority of the voting securities or economic interests in the acquiring or surviving entity (calculated on an as-converted and fully-diluted basis), shall be deemed to be a Liquidity Event of the Corporation within the meaning of this Section 4 and subject to all of the provisions of this Section 4. The agreement with respect to such sale, merger, consolidation or other transaction shall provide that the consideration payable to the shareholders of the Corporation (in the case of a merger, consolidation or transfer of securities), or consideration payable to the Corporation, together with all other available assets of the Corporation (in the case of an asset sale), shall be distributed to the holders of Capital Stock of the Corporation in accordance with this Section 4. Further, if any portion of the consideration payable to the shareholders of the Corporation is placed into escrow and/or is payable to the shareholders of the Corporation subject to contingencies, the applicable definitive agreement shall provide that (1) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "Initial Consideration") shall be allocated among the holders of Capital Stock in accordance with this Section 4 as if the Initial Consideration were the only consideration payable in connection with such Liquidity Event and (2) any additional consideration that becomes payable to the shareholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of Capital Stock in accordance with Section 4 after taking into account the previous payment of the Initial Consideration as part of the same transaction. The amount deemed distributed to the holders of Preferred Stock and the holders of Common Stock upon any such transaction shall be the cash and the value of the property, rights or securities distributed to such holders by the Corporation or the acquiring person or entity. The value of any property, rights or securities distributed to the holders of Capital Stock shall be determined in good faith by mutual agreement of the Corporation and the holders of a majority of the shares of the Series A-1 Preferred Stock.

5. Conversion of Series A-1 Convertible Preferred Stock into Series A-1 Redeemable Preferred Stock and Common Stock.

5.1 Exercise of Conversion Rights.

(a) Subject to the terms and conditions of this Section 5, the holder of any share of Series A-1 Convertible Preferred Stock shall have the right at any time, at such holder's option, to convert such share into (i) one share of Series A-1 Redeemable Preferred Stock and (ii) the number of shares of Common Stock determined by multiplying one (1) times the quotient obtained by dividing (A) its Original Series A-1 Purchase Price by (B) its "Series A-1 Conversion Price," which term shall initially mean the Original Series A-1 Purchase Price for such share of Series A-1 Preferred Stock, subject to adjustment from time to time pursuant to Section 5.3.

(b) A holder of Series A-1 Convertible Preferred Stock may exercise such holder's conversion rights by giving written notice to the Corporation that the holder elects to convert a stated number of shares of Series A-1 Convertible Preferred Stock on the date specified in such notice (the "Conversion Date") and by surrendering the certificate or certificates

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representing the Series A-1 Convertible Preferred Stock to be converted to the Corporation at its principal office at any time during its usual business hours on or before the Conversion Date.

5.2 Issuance of Series A-1 Redeemable Preferred Stock and Common Stock; Effect of Conversion. Promptly after receipt of the written notice from the holder referred to above and surrender of the certificate or certificates representing the share or shares of Series A-1 Convertible Preferred Stock to be converted, the Corporation shall, as soon as possible, cause to be issued and delivered to the holder, registered in such holder's name, certificates for the number of shares of Series A-1 Redeemable Preferred Stock and Common Stock issuable upon the conversion of such share or shares together with cash in lieu of any fraction of a share remaining, in accordance with Section 5.3(f). Such conversion shall be deemed to have been effected as of the opening of business on the Conversion Date, and at such time, except for the right to receive any declared but unpaid dividends on such share or shares, the rights of the holder of such share or shares so converted shall cease and such holder shall be deemed to have become the holder of record of the shares of Series A-1 Redeemable Preferred Stock and Common Stock represented thereby. Any shares of Series A-1 Convertible Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for shareholder action) as may be necessary to reduce the authorized number of shares of Series A-1 Convertible Preferred Stock accordingly.

5.3 Adjustment of Conversion Prices. The Series A-1 Conversion Price from time to time in effect for each series of Series A-1 Preferred Stock shall be subject to adjustment (to the nearest hundredth of a cent) from time to time as follows:

(a) Adjustment to Series A-1 Conversion Price for Certain Issuances. If at any time after the original date of issuance of the Series A-1 Convertible Preferred Stock, the Corporation shall issue (or be deemed to have issued) any shares of Common Stock or any Common Stock Equivalents (as hereinafter defined), for a consideration per share (determined in accordance with this Section 5.3(a)) less than either (or both) of (A) the applicable Series A-1 Conversion Price in effect and (B) the Common Stock Fair Value, in either case immediately prior to the issuance (or deemed issuance) of such Common Stock or Common Stock Equivalents, the Series A-1 Conversion Price in effect immediately prior to each such issuance (or deemed issuance) shall be decreased to the amount determined in accordance with the following formula:

$$\text{New Series A-1 Conversion Price} = \frac{(P1*Q1) + (P2*Q2)}{Q1 + Q2}$$

For purposes of the foregoing formula:

- P1 = the Series A-1 Conversion Price in effect or Common Stock Fair Value, in either case immediately prior to such issuance, whichever is less.
- Q1 = the number of shares of Common Stock deemed outstanding (in accordance with subparagraph (v) below) immediately prior to such issuance.
- P2 = the average price per share received by the Corporation upon such issuance (determined in accordance with subparagraph (ii) below).
- Q2 = the number of shares of Common Stock issued or sold, or deemed to have been issued or sold (in accordance with subparagraph (iii) below), upon such issuance.

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For purposes of this Section 5, the following provisions shall be applicable:

(i) "Common Stock Equivalents" means any equity or debt interest or security convertible into or exchangeable for Common Stock, or any right, warrant or option to acquire any Common Stock or such convertible or exchangeable equity or debt interest or security.

(ii) The per share consideration for the sale or issuance of Common Stock shall be the price per share received by the Corporation after payment of any related commissions, discounts and other similar expenses. In the case of the sale or issuance of Common Stock Equivalents, the per share consideration shall be determined by dividing (A) the maximum number of shares of Common Stock issuable with respect to such Common Stock Equivalents into (B) the sum of (1) aggregate consideration received by the Corporation upon the sale or issuance of such Common Stock Equivalents plus (2) the minimum aggregate amount of any additional consideration receivable by the Corporation upon the conversion or exercise of such Common Stock Equivalents less the payment of any related commissions, discounts or other similar expenses. The value of any non-cash consideration received or receivable upon the sale or issuance of Common Stock or Common Stock Equivalents shall be determined reasonably and in good faith by a majority of the Board.

(iii) In the case of the sale or issuance of Common Stock Equivalents, the maximum number of shares of Common Stock issuable with respect to such Common Stock Equivalents shall be deemed issued on the earlier of (A) the date that the Corporation enters into a binding agreement to sell or issue such Common Stock Equivalents and (B) the date of the actual sale or issuance of such Common Stock Equivalents. In the case of the sale or issuance of shares of Common Stock, such Common Stock shall be deemed to have been issued on the earlier of (X) the date that the Corporation enters into a binding agreement to sell or issue such Common Stock and (Y) the date of the actual sale or issuance of such Common Stock.

(iv) If any shares of Common Stock or Common Stock Equivalents included in adjustments under this Section 5.3(a) are not issued, or expire or terminate without the Common Stock to which they relate having been issued, the Series A-1 Conversion Price shall be readjusted to eliminate the effect of the assumed issuance of such Common Stock. If any Common Stock Equivalents by their terms provide for subsequent increases or decreases in the additional consideration payable for the related Common Stock or for subsequent increases or decreases in the number of shares of Common Stock obtainable, upon any such increase or decrease, the Series A-1 Conversion Price shall be appropriately readjusted to the extent such Common Stock Equivalents have not then expired or been exercised or converted. Any aggregate increase in the Series A-1 Conversion Price caused by all such readjustments shall not exceed the decrease in the Series A-1 Conversion Price made upon the issuance of the Common Stock Equivalents to which such readjustment relates.

(v) The number of shares of Common Stock outstanding at any time shall include all outstanding shares of Common Stock and all shares of Common Stock issuable pursuant to any Common Stock Equivalent then outstanding.

(vi) There shall be excluded from the adjustment of the Series A-1 Conversion Price: (A) the issuance of options to purchase up to 1,088,651 shares of Common Stock to employees of the Company or any subsidiary under the Equity Incentive Plan (as defined in the Investor Rights Agreement) or any other stock option plan approved by the Board and the holders of a majority of the outstanding shares of Series A-1 Preferred Stock; (B) the issuance of

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shares of Common Stock or Common Stock Equivalents as consideration for any debt financing, acquisition or strategic business transaction or arrangement by the Corporation or any subsidiary, which debt financing, acquisition or transaction or arrangement (including the terms and conditions of the issuance) have been approved by the Board (including the approval of a director on the Board designated by the holders of Series A-1 Preferred Stock); (C) the issuance of shares of Common Stock or Common Stock Equivalents issued as a distribution or dividend on Series A-1 Preferred Stock; and (D) the issuance of shares of Common Stock or Common Stock Equivalents issued by reason of a subdivision, dividend, stock split or other distribution that is covered by Section 5(b) or Section 5(c).

(vii) No adjustment in the Series A-1 Conversion Price shall be made as the result of the issuance or deemed issuance of Common Stock or Common Stock Equivalents if the Corporation receives written notice from the holders of a majority of the then outstanding shares of Series A-1 Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Common Stock or Common Stock Equivalents.

(viii) "Common Stock Fair Value" means the fair market value of a share of Common Stock, valued as if it were being sold as part of the sale of all outstanding equity securities of the Corporation to an unrelated third party in an arms-length transaction for cash only, without deduction for illiquidity, minority interest, lack of control or any other similar considerations, and the proceeds of such sale, together with all cash and other property payable to the Corporation upon exercise of all "in-the-money" warrants, options and purchase rights to acquire shares of capital stock of the Corporation, were being distributed in accordance with the liquidation provisions of the Articles of Incorporation. Common Stock Fair Value shall be determined separately with respect to each adjustment in the Series A-1 Conversion Price, and reasonably and in good faith by the Board. If, not later than 30 days after receipt of the applicable certificate provided for in Section 5.3(c), holders of a majority of the outstanding shares of Series A-1 Convertible Preferred Stock notify the Corporation that they do not agree with the Board's determination of Common Stock Fair Value, the Common Stock Fair Value will be determined by two appraisers, one selected by the Board and one selected by holders of a majority of the outstanding shares of Series A-1 Convertible Preferred Stock. Common Stock Fair Value shall be the value arrived at by those appraisers within 30 days following the appointment of the last appraiser to be appointed. If the two appraisers agree on the fair market value within such period, such agreed value shall be the Common Stock Fair Value. If the appraisers cannot agree, but their valuations are within 10% of each other, Common Stock Fair Value shall be the average of the two valuations. If the appraisers cannot agree, and the differences in the valuations are greater than 10%, the appraisers shall select a third appraiser who will calculate Common Stock Fair Value independently and, except as provided in the next sentence, the Common Stock Fair Value shall be the average of the two Common Stock Fair Values arrived at by the two appraisers who are closest in amount. If one appraiser's valuation is the mean of the other two valuations, such mean valuation shall be the Common Stock Fair Value. If the two original appraisers cannot agree upon a third appraiser within 10 days following the end of the 30 day period referred to above, then the third appraiser shall be appointed by the American Arbitration Association in Boston, Massachusetts. If, for any reason, an appraiser is not selected by either the holders of a majority of the outstanding Series A-1 Convertible Preferred Stock or the Board within 30 days after delivery of the notice under this Section, the holders of a majority of the outstanding Series A-1 Convertible Preferred Stock or the Board, as the case may be, may give notice thereof to the other, and, if an appraiser is not appointed by the party receiving notice within 15 days thereafter, the Common Stock Fair Value shall be determined by a single appraiser selected by the party that selected such appraiser initially. Each appraiser selected under this Section shall be a person or entity of recognized

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standing and experience in valuing firms engaged in the principal businesses in which the Corporation is engaged, without any affiliation or business relationship with the Corporation. The fees and expenses of the appraisers shall be borne by the Corporation.

(b) **Stock Dividends, Stock Splits, Subdivisions and Combinations.** In case the Corporation shall at any time subdivide its outstanding shares of Common Stock into a greater number of shares, or make any dividend or other distribution upon any stock of the Corporation payable in Common Stock, the Series A-1 Conversion Price in effect immediately prior to such subdivision, dividend or distribution shall be proportionately reduced, and in case at any time the outstanding shares of Common Stock of the Corporation shall be combined into a smaller number of shares, the Series A-1 Conversion Price in effect immediately prior to such combination shall be proportionately increased.

(c) **Adjustment for Reclassifications, Merger, Sale of Assets, etc.** Without limiting any approval or other rights of the holders of the Series A-1 Preferred Stock, if there occurs any capital reorganization or any reclassification of the Capital Stock of the Corporation, any consolidation or merger of the Corporation with or into another company or other entity, or any sale or conveyance of all or substantially all of the assets of the Corporation to another entity, any holder of Series A-1 Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A-1 Convertible Preferred Stock, in addition to shares of Series A-1 Redeemable Preferred Stock, the same kind and amounts of securities and other assets that the holder would have received as a holder of Common Stock if such holder had exercised such holder's conversion rights immediately prior to such transaction. In any such case, appropriate adjustments (as determined reasonably and in good faith by the Board) shall be made with respect to the rights and interests of the holders of Series A-1 Convertible Preferred Stock after such event to the end that the provisions hereof (including the adjustment provisions in this Section and number of shares issuable upon conversion of the Series A-1 Convertible Preferred Stock) shall thereafter apply as reasonably as they may to the securities or assets thereafter deliverable upon the conversion of shares of Series A-1 Convertible Preferred Stock.

(d) **Adjustments Based on Return and EBITDA.** The number of shares of Common Stock issuable upon conversion of the Series A-1 Convertible Preferred Stock will be reduced upon the occurrence of the events set forth below:

(i) As used herein, a "Trigger Event" means either a Liquidity Event or the closing of the repurchase by the Corporation of the Series A-1 Preferred Stock pursuant to the exercise of rights under Section 3 of the Investor Rights Agreement, whichever occurs first. If, after giving effect to the reduction provided for in this sentence, (A) the holders of the Series A-1 Preferred Stock receive aggregate consideration per share of Series A-1 Preferred Stock equal to or greater than 2.25 times the Original Series A-1 Purchase Price in connection with a Trigger Event occurring on or prior to December 31, 2012, or (B) the holders of the Series A-1 Preferred Stock receive aggregate consideration per share of Series A-1 Preferred Stock equal to or greater than 3.0 times the Original Series A-1 Purchase Price in connection with a Trigger Event occurring after December 31, 2012, then contemporaneously with such Trigger Event the number of shares of Common Stock issuable upon conversion of the Series A-1 Convertible Preferred Stock will be reduced to an amount that equals 15% of the Corporation's fully-diluted Common Stock as of the initial date of issuance of the Series A-1 Preferred Stock, after giving effect to the reductions provided for in this Section and any resulting reductions under the Mezzanine Warrants (as defined in the Investor Rights Agreement) to the extent not previously exercised. If the foregoing hurdles are not reached, but a lesser reduction in the number of shares of Common Stock issuable upon conversion of the Series A-1 Convertible

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Preferred Stock would result in the applicable hurdle being met upon the Trigger Event, then contemporaneously with such Trigger Event the number of shares of Common Stock issuable upon conversion of the Series A-1 Convertible Preferred Stock will be reduced by a percentage such that the applicable hurdle rate would be met but not exceeded. For purposes of this Section, aggregate consideration received by the holders of the Series A-1 Preferred Stock (A) shall include only cash, and shall not include funds held in escrow, deferred payments or other non-cash consideration, (B) shall include cash dividends received by the holders of the Series A-1 Preferred Stock prior to the Trigger Event and (C) shall not include any amounts received by the holders of the Series A-1 Preferred Stock or their affiliates in the form of fees, expense reimbursement or similar items.

(ii) As used herein "EBITDA" shall have the meaning given to it in the Investor Rights Agreement. If the Corporation's EBITDA for calendar year 2012 is at least equal to the target EBITDA for such period set forth in Section 5 of the Investor Rights Agreement, the number of shares of Common Stock issuable upon conversion of the Series A-1 Convertible Preferred Stock will be reduced to an amount that equals 25% of the Corporation's fully-diluted Common Stock as of the initial date of issuance of the Series A-1 Preferred Stock, after giving effect to the reductions provided for in this Section and any resulting reductions under the Mezzanine Warrants to the extent not previously exercised. If the Corporation's EBITDA for calendar year 2013 is at least equal to the target EBITDA for such period set forth in Section 5 of the Investor Rights Agreement, the number of shares of Common Stock issuable upon conversion of the Series A-1 Convertible Preferred Stock will be reduced to an amount that equals 25% (or 20%, if the reduction provided for in the preceding sentence occurs) of the Corporation's fully-diluted Common Stock as of the initial date of issuance of the Series A-1 Preferred Stock, after giving effect to the reductions provided for in this Section and any resulting reductions under the Mezzanine Warrants to the extent not previously exercised. If either or both of the foregoing EBITDA hurdles is not met, and the Corporation's EBITDA for calendar year 2014 is at least equal to the target EBITDA for such period set forth in Section 5 of the Investor Rights Agreement, the number of shares of Common Stock issuable upon conversion of the Series A-1 Convertible Preferred Stock will be reduced to an amount that equals 20% of the Corporation's fully-diluted Common Stock as of the initial date of issuance of the Series A-1 Preferred Stock, after giving effect to the reductions provided for in this Section and any resulting reductions under the Mezzanine Warrants to the extent not previously exercised. If, not later than 30 days after receipt of the applicable certificate provided for in Section 5.3(e), holders of a majority of the outstanding shares of Series A-1 Convertible Preferred Stock notify the Corporation that they do not agree with the Board's determination of EBITDA, then EBITDA will be determined by an independent Big-4 accounting firm selected by agreement of the Board and holders of a majority of the outstanding shares of Series A-1 Convertible Preferred Stock, or by lot if agreement is not reached within 15 days after delivery of the notice from the holders of Series A-1 Convertible Preferred Stock referred to above. The accountant selected under this Section shall have no affiliation or business relationship with the Corporation. The fees and expenses of the accountant shall be borne by the Corporation.

(iii) Notwithstanding the foregoing provisions of this Section 5.3(d), in no event will the aggregate number of shares of Common Stock into which the Series A-1 Convertible Preferred Stock may be converted be reduced below an amount that equals 15% of the Corporation's fully-diluted Common Stock as of the initial date of issuance of the Series A-1 Preferred Stock, after giving effect to the reductions provided for in this Section and any resulting reductions under the Mezzanine Warrants to the extent not previously exercised. For purposes of this Section, fully-diluted Common Stock assumes the exercise, conversion or exchange of all options, warrants, convertible securities and other direct or indirect rights to purchase or acquire

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Common Stock, whether or not then exercisable, convertible or exchangeable, and assumes that all 1,088,651 shares of Common Stock issuable under the Equity Incentive Plan are outstanding. The Corporation represents that as of the date these Articles of Incorporation are filed with the Secretary of State of Florida (the "Filing Date"), the number of fully-diluted shares of Common Stock is 18,309,338.

(iv) For avoidance of doubt, after any such reduction to 15%, 20% or 25% (or such other amount above 15% pursuant to Section 5.3(d)(i) above), as the case may be, any reductions to the Series A-1 Conversion Price after the initial date of issuance of the Series A Preferred Stock issuance shall still be applicable.

(v) For avoidance of doubt, as of the Filing Date, the number of shares of Common Stock into which all shares of Series A-1 Convertible Preferred Stock issued on the Filing Date shall initially be convertible shall equal 30.0% of the Corporation's fully-diluted Common Stock as of such date.

(e) **Certificate as to Adjustments.** Whenever the Series A-1 Conversion Price shall be adjusted as provided in this Section, or the Corporation determines a reduction is required pursuant to Section 5.3(d), the Corporation shall promptly send to each holder of Series A-1 Convertible Preferred Stock a written statement, certified by the chief financial officer or chief executive officer of the Corporation, showing in detail the facts requiring such adjustment and the Series A-1 Conversion Price that shall be in effect after such adjustment. The chief financial officer or chief executive officer of the Corporation shall, upon written request at any time of any holder of Series A-1 Convertible Preferred Stock, promptly furnish to such holder a certificate setting forth the Series A-1 Conversion Price then in effect and the number of shares and amount, if any, of other securities, cash or property that then would be received upon conversion of the Series A-1 Convertible Preferred Stock.

(f) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of the Series A-1 Convertible Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay such holder cash in United States dollars equal to such fraction multiplied by the then fair market value of one share of Common Stock (as determined reasonably and in good faith by the Board). The determination as to whether or not any fractional shares are issuable shall be based upon the total number of shares of Series A-1 Convertible Preferred Stock converted at one time, and not upon each share or certificate representing shares of Series A-1 Convertible Preferred Stock so converted.

(g) **Notice of Certain Dates.** In the event the Corporation shall propose to take any action of the types described in this Section 5.3, the Corporation shall give notice to each holder of Series A-1 Convertible Preferred Stock, which notice shall specify the record date, if any, with respect to any such action and the date on which such action is to take place. Such notice shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action on the Series A-1 Conversion Price and the number, kind or class of shares or other securities or assets receivable upon conversion of shares of Series A-1 Convertible Preferred Stock. In the case of any action that would require the fixing of a record date, such notice shall be given at least 20 days prior to the date so fixed, and in the case of all other actions, such notice shall be given at least 20 days prior to the taking of such proposed action.

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5.4 Reservation. The Corporation will at all times reserve and keep available out of its authorized but unissued shares of Series A-1 Redeemable Preferred Stock and Common Stock, solely for the purpose of issuance upon the conversion of Series A-1 Convertible Preferred Stock, the maximum number of shares of Series A-1 Redeemable Preferred Stock and Common Stock as could be issuable upon the conversion of all then outstanding shares of Series A-1 Convertible Preferred Stock. All shares of Series A-1 Redeemable Preferred Stock and Common Stock that are issuable upon conversion of Series A-1 Convertible Preferred Stock in accordance with this Articles of Incorporation will, when so issued, be duly authorized, validly issued, fully paid and nonassessable. The Corporation will take all commercially reasonable action that may be necessary to assure that all shares of Series A-1 Redeemable Preferred Stock and Common Stock issuable upon such conversion may be so issued without violation of any law, regulation or agreement applicable to the Corporation.

5.5 No Charge. The issuance of certificates representing Series A-1 Redeemable Preferred Stock and Common Stock upon conversion of Series A-1 Convertible Preferred Stock as set forth herein shall be made without charge for any expense or issuance tax in respect thereof, provided that the Corporation shall not be required to pay any taxes that may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of shares converted.

5.6 Automatic Conversion.

(a) The shares of Series A-1 Convertible Preferred Stock shall automatically be converted into the number of shares of Series A-1 Redeemable Preferred Stock and Common Stock into which such shares of Series A-1 Convertible Preferred Stock are convertible under this Section 5 upon (i) the election of the holders of two-thirds of the shares of Series A-1 Convertible Preferred Stock by written notice to the Corporation, or (ii) the closing of a Qualified Public Offering (as hereinafter defined).

(b) The date of any mandatory conversion that occurs pursuant to this Section 5.6 is sometimes referred to herein as a "Mandatory Conversion Date." The Corporation will promptly give all holders of record of the applicable Series A-1 Convertible Preferred Stock written notice of the Mandatory Conversion Date, which notice may be delivered after the Mandatory Conversion Date. Such notice shall contain the Mandatory Conversion Date and the date and place to surrender such holder's shares of Series A-1 Convertible Preferred Stock to the Corporation. Each holder of shares of the Series A-1 Convertible Preferred Stock shall surrender such holder's certificate or certificates for all such shares to the Corporation on or before the date, and at the place, designated in such notice. The Corporation shall thereafter as soon as possible deliver certificates for the number of shares of Series A-1 Redeemable Preferred Stock and Common Stock to which such holder is entitled, together with any cash in lieu of any fraction of a share as provided in Section 5.3(f). Such mandatory conversion shall be deemed to have been effected as of the Mandatory Conversion Date and, at such time, except for the right to receive any declared but unpaid dividends on such share or shares, the rights of the holder of such share or shares so converted shall cease and such holder shall be deemed to have become the holder of record of the shares of Series A-1 Redeemable Preferred Stock and Common Stock represented thereby.

(c) As used herein, a "Public Offering" means an underwritten public offering of Common Stock by the Corporation pursuant to a registration statement under the Securities Act of 1933, as amended. As used herein, "Qualified Public Offering" means a Public Offering in which (i) the pre-money valuation of the outstanding Capital Stock of the

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Corporation immediately prior to such offering, based on the price per share at which shares of Common Stock of the Corporation are to be sold to the public, is at least five times the Original Series A-1 Purchase Price, (ii) the aggregate gross proceeds to the Corporation from such Public Offering will be at least \$50 million and (iii) the Corporation's Common Stock is listed for trading on the New York Stock Exchange or the Nasdaq Global Market.

6. No Dilution or Impairment. The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of the Series A-1 Preferred Stock set forth herein, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate in order to protect the rights of the holders of the Series A-1 Preferred Stock against dilution or other impairment. Without limiting the generality of the foregoing, the Corporation (a) will not increase the par value of any shares of stock receivable on the conversion of the Series A-1 Preferred Stock above the amount payable therefor on such conversion, (b) will take all such action as may be necessary or appropriate in order that the Corporation may validly and legally issue fully paid and nonassessable shares of stock on the conversion of all Series A-1 Preferred Stock from time to time outstanding, and (c) will not consolidate with or merge into any other entity or permit any such entity to consolidate with or merge into the Corporation (if the Corporation is not the surviving entity), unless such other entity shall expressly assume in writing, and will be legally bound by, all of the terms of the Series A-1 Preferred Stock set forth herein.

7. Additional Provisions Relating to Notices.

7.1 In the event of (a) 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, or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right; (b) any capital reorganization of the Corporation, any reclassification or recapitalization of the Capital Stock of the Corporation, any merger or consolidation of the Corporation, or any transfer of all or any substantial portion of the assets of the Corporation, or any other transactions contemplated by Section 5.3; or (c) any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall deliver to each holder of Series A-1 Preferred Stock a notice specifying (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right and a description of such dividend, distribution or right; (ii) the date on which any such reorganization, reclassification, recapitalization, transfer, merger, consolidation, dissolution, liquidation or winding up is expected to become effective; and (iii) the time, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to receive or exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, recapitalization, transfer, merger, consolidation, dissolution, liquidation or winding up. In the case of any action that would require the fixing of a record date, such notice shall be given at least 20 days prior to the date so fixed, and in the case of all other actions, such notice shall be given at least 20 days prior to the taking of such proposed action.

7.2 All notices delivered under this Articles of Incorporation to any holder of Preferred Stock will be sent by prepaid overnight courier or first class or registered mail, postage prepaid, or (to the extent permitted by law) by e-mail to each record holder of Preferred Stock at such holder's address last shown on the records of the transfer agent for the Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent).

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8. Waivers.

8.1 Any of the rights of the Series A-1 Convertible Preferred Stock or the Series A-1 Redeemable Preferred Stock set forth herein may be waived in writing by the affirmative vote of the holders of a majority of the shares of the Series A-1 Convertible Preferred Stock or the Series A-1 Redeemable Preferred Stock, respectively. The waiver of any provision of this Articles of Incorporation shall not be construed as a waiver of any other provision contained herein or as a continuing waiver of any subsequent application of any provision contained herein. No delay or omission by any holder or holders of Preferred Stock in exercising any right under this Articles of Incorporation shall operate as a waiver of that or any other right.

8.2 To the fullest extent permitted by law, the Corporation renounces any interest or expectancy of the Corporation in, or being offered the opportunity to participate in, specified business opportunities or specified classes of business or categories of business opportunities that are presented to the holders of the Series A-1 Preferred Stock or any of their affiliates, employees, partners, representatives or agents (collectively, the "Covered Persons"), unless such opportunities are presented to a Covered Person solely in his capacity as a director of the Corporation.

Article 5
Registered Agent and Office

The street address of the Corporation's current registered office is 3937 Tampa Road, Suite 2, Oldsmar, Florida 34677, and the name of the Corporation's current registered agent at that address is Daniel A. Harris.

Article 6
Purpose

The Corporation is organized to engage in any activity or business permitted under the laws of the United States and Florida.

Article 7
Powers

The Corporation shall have the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, subject to any limitations or restrictions imposed by applicable law or these Articles of Incorporation.

Article 8
Indemnification

No director of the Corporation shall be personally liable to the Corporation or its shareholders for monetary damages to the Corporation or any other person for any statement, vote, decision or failure to act, regarding corporate management or policy, as a director, except to the extent that such exemption from liability or limitation thereof is not permitted under the Florida Act.

The Corporation shall indemnify to the full extent permitted by law any person who is made, or is threatened to be made, a party to any action suit or proceeding (whether civil, criminal, administrative or investigative) by reason of the fact that he or she is or was a director

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or officer of the Corporation or serves or served any other enterprises at the request of the Corporation. If the Florida Act is amended after the filing of these Articles of Incorporation of which this Article 8 is a part to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Florida Act as so amended.

Any repeal or modification of the foregoing paragraph by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

Article 9
Amendment of Articles of Incorporation

Subject to the voting and other rights of the shareholders set forth in Article 4 hereof, the Corporation reserves the right to amend, alter, change, or repeal any provision contained in these Articles of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon the shareholders herein are subject to this reservation.

[Signatures on following page.]

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IN WITNESS WHEREOF, the undersigned officer of the Corporation has executed these Articles of Incorporation for the uses and purposes therein stated.

Date: February 17, 2011



Steve Torres, Chief Financial Officer

**Certificate Pursuant
to
Section 607.1007(4), Florida Statutes**

In accordance with Section 607.1007(4), *Florida Statutes*, the undersigned, being a duly elected officer of **VOLOGY, INC**, a Florida corporation, does hereby certify as follows:

- (a) the Amended and Restated Articles of Incorporation set forth above contain amendments requiring shareholder approval;
- (b) the amendments were adopted by the Board of Directors and approved by the shareholders on February 14, 2011; and
- (c) the number of votes cast for the amendments by the shareholders was sufficient for approval.

Date: February 17, 2011



Steve Torres, Chief Financial Officer