

P16000016019

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FLORIDA DEPARTMENT OF STATE
Division of Corporations

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
16 MAY 31 AM 11:22

May 16, 2016

ASHLEY BOLDUC, ESQ.
FITZGERALD YAP KREDITOR LLP
16148 SAND CANYON AVE.
IRVINE, CA 92618

SUBJECT: CLIXTV, INC.
Ref. Number: P16000016019

We have received your document and check(s) totaling \$35.00. However, the enclosed document has not been filed and is being returned to you for the following reason(s):

Please file the document as either Articles of Amendment or Restated Articles of Incorporation pursuant to applicable Florida Statutes.

If you have any questions concerning the filing of your document, please call (850) 245-6838.

Cheryl R McNair
Regulatory Specialist II

Letter Number: 416A00010260

RECEIVED

16 MAY 31 AM 8:19

DEPARTMENT OF STATE
DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

FITZGERALD·YAP·KREDITOR LLP

ATTORNEYS AT LAW

May 27, 2016

Michael J. Fitzgerald*
Calvin C.S. Yap*
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Jeanine A. Scalerio*

AUTHOR'S E-MAIL: djarrett@fyklaw.com

VIA REGULAR MAIL

Florida Secretary of State
Attn: Cheryl R. McNair
Regulatory Specialist II
Division of Corporations
P. O. Box 6327
Tallahassee, FL 32314

Re: ClixTV, Inc. – Doc #P1600001601; Letter #416A00010260
Articles of Amendment


Dear Ms. McNair:

Pursuant to your letter dated May 16, 2016 (copy enclosed), we have revised Exhibit A and forward to you the corrected Articles of Amendment for filing on behalf of ClixTV, Inc., Document #P1600001601. The filing fee for \$35.00 was provided previously which you still retain.

Please return the file stamped copy of the Articles of Amendment to me in the enclosed self-addressed stamped envelope.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,


Doris J. Jarrett
Legal Assistant

Enclosure

COVER LETTER

FILED STATE
SECRETARY OF
DIVISION OF CORPORATIONS
16 MAY 31 4:11:23

TO: Amendment Section
Division of Corporations

NAME OF CORPORATION: CLIXTV, INC.

DOCUMENT NUMBER: P16000016019

The enclosed *Articles of Amendment* and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Ashley Bolduc, Esq.

Name of Contact Person

FitzGerald Yap Kreditor LLP

Firm/ Company

16148 Sand Canyon Ave.

Address

Irvine, CA 92618

City/ State and Zip Code

djarrett@fyklaw.com and/or abolduc@fyklaw.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Ashley Bolduc

at (949)

788-8900

Name of Contact Person

Area Code & Daytime Telephone Number

Enclosed is a check for the following amount made payable to the Florida Department of State:

☐ \$35 Filing Fee

☐ \$43.75 Filing Fee &
Certificate of Status

☐ \$43.75 Filing Fee &
Certified Copy
(Additional copy is
enclosed)

☐ \$52.50 Filing Fee
Certificate of Status
Certified Copy
(Additional Copy
is enclosed)

Mailing Address

Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Street Address

Amendment Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

Articles of Amendment
to
Articles of Incorporation
of

CLIXTV, INC.

(Name of Corporation as currently filed with the Florida Dept. of State)

P16000016019

(Document Number of Corporation (if known))

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
16 MAY 31 AM 11:23

Pursuant to the provisions of section 607.1006, Florida Statutes, this *Florida Profit Corporation* adopts the following amendment(s) to its Articles of Incorporation:

A. If amending name, enter the new name of the corporation:

N/A

The new name must be distinguishable and contain the word "corporation," "company," or "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.," or the designation "Corp.," "Inc.," or "Co." A professional corporation name must contain the word "chartered," "professional association," or the abbreviation "P.A."

B. Enter new principal office address, if applicable:

(Principal office address **MUST BE A STREET ADDRESS**)

N/A

C. Enter new mailing address, if applicable:

(Mailing address **MAY BE A POST OFFICE BOX**)

N/A

D. If amending the registered agent and/or registered office address in Florida, enter the name of the new registered agent and/or the new registered office address:

Name of New Registered Agent N/A

(Florida street address)

New Registered Office Address: _____, Florida _____
(City) (Zip Code)

New Registered Agent's Signature, if changing Registered Agent:

I hereby accept the appointment as registered agent. I am familiar with and accept the obligations of the position.

Signature of New Registered Agent, if changing

If amending the Officers and/or Directors, enter the title and name of each officer/director being removed and title, name, and address of each Officer and/or Director being added: N/A

(Attach additional sheets, if necessary)

Please note the officer/director title by the first letter of the office title:

P = President; V= Vice President; T= Treasurer; S= Secretary; D= Director; TR= Trustee; C = Chairman or Clerk; CEO = Chief Executive Officer; CFO = Chief Financial Officer. If an officer/director holds more than one title, list the first letter of each office held. President, Treasurer, Director would be PTD.

Changes should be noted in the following manner. Currently John Doe is listed as the PST and Mike Jones is listed as the V. There is a change, Mike Jones leaves the corporation, Sally Smith is named the V and S. These should be noted as John Doe, PT as a Change, Mike Jones, V as Remove, and Sally Smith, SV as an Add.

Example:

X Change PT John Doe

X Remove V Mike Jones

X Add SV Sally Smith

Type of Action (Check One)	Title	Name	Address
1) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add	_____	_____	_____
<input type="checkbox"/> Remove	_____	_____	_____
2) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add	_____	_____	_____
<input type="checkbox"/> Remove	_____	_____	_____
3) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add	_____	_____	_____
<input type="checkbox"/> Remove	_____	_____	_____
4) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add	_____	_____	_____
<input type="checkbox"/> Remove	_____	_____	_____
5) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add	_____	_____	_____
<input type="checkbox"/> Remove	_____	_____	_____
6) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add	_____	_____	_____
<input type="checkbox"/> Remove	_____	_____	_____

E. If amending or adding additional Articles, enter change(s) here:

(Attach additional sheets, if necessary). (Be specific)

Increasing authorized shares and designating a series of preferred stock.

F. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself:

(if not applicable, indicate N/A)

See attached Exhibit A.

The date of each amendment(s) adoption: _____, if other than the date this document was signed.

Effective date if applicable: April 18, 2016
(no more than 90 days after amendment file date)

Note: If the date inserted in this block does not meet the applicable statutory filing requirements, this date will not be listed as the document's effective date on the Department of State's records.

Adoption of Amendment(s) (CHECK ONE)

☒ The amendment(s) was/were adopted by the shareholders. The number of votes cast for the amendment(s) by the shareholders was/were sufficient for approval.

☐ The amendment(s) was/were approved by the shareholders through voting groups. The following statement must be separately provided for each voting group entitled to vote separately on the amendment(s):

"The number of votes cast for the amendment(s) was/were sufficient for approval

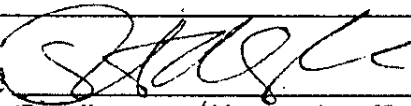
by _____."
(voting group)

☐ The amendment(s) was/were adopted by the board of directors without shareholder action and shareholder action was not required.

☐ The amendment(s) was/were adopted by the incorporators without shareholder action and shareholder action was not required.

Dated April 18, 2016

Signature


(By a director, president or other officer – if directors or officers have not been selected, by an incorporator – if in the hands of a receiver, trustee, or other court appointed fiduciary by that fiduciary)

Patricia A. Sullivan

(Typed or printed name of person signing)

Chief Financial Officer

(Title of person signing)

EXHIBIT "A"

CLIXTV, INC.

ARTICLE 2 of the Articles of ClixTV, Inc. shall be amended to read as follows:

ARTICLE 2. SHARES

2.1 Authorized Shares. The total number of shares which the corporation is authorized to issue is 100,000,000, consisting of 70,000,000 shares of common stock, having a par value of \$0.001 (the "Common Stock"), and 30,000,000 shares of preferred stock, having a par value of \$0.001 (the "Preferred Stock"). The Common Stock is subject to the rights and preferences of the Preferred.

2.2 Issuance of Preferred Stock in Series. The Preferred Stock may be issued from time to time in one or more series in any manner permitted by law and the provisions of these Articles of Incorporation of the corporation, as determined from time to time by the board of directors and stated in the resolution or resolutions providing for the issuance thereof, prior to the issuance of any shares thereof. The board of directors shall have the authority to fix and determine and to amend, subject to the provisions hereof, the rights and preferences of the shares of any series that is wholly unissued or to be established. Unless otherwise specifically provided in the resolution establishing any series, the board of directors shall further have the authority, after the issuance of shares of a series whose number it has designated, to amend the resolution establishing such series to decrease the number of shares of that series, but not below the number of shares of such series then outstanding.

2.3 Dividends. The holders of shares of the Preferred Stock shall be entitled to receive dividends, out of the funds of the corporation legally available therefor, at the rate and at the time or times, whether cumulative or noncumulative, as may be provided by the board of directors in designating a particular series of Preferred Stock. If such dividends on the Preferred Stock shall be cumulative, then if dividends shall not have been paid, the deficiency shall be fully paid or the dividends declared and set apart for payment at such rate, but without interest on cumulative dividends, before any dividends on the common stock shall be paid or declared and set apart for payment. The holders of the Preferred Stock shall not be entitled to receive any dividends thereon other than the dividends referred to in this section.

2.4 Redemption. The Preferred Stock may be redeemable at such price, in such amount, and at such time or times as may be provided by the board of directors in designating a particular series of Preferred Stock. In any event, such Preferred Stock may be repurchased by the corporation to the extent legally permissible.

2.5 Liquidation. In the event of any liquidation, dissolution, or winding up of the affairs of the corporation, whether voluntary or involuntary, then, before any distributions shall

be made to the holders of the common stock, the holders of the Preferred Stock at the time outstanding shall be entitled to be paid the preferential amount or amounts per share as may be provided by the board of directors in designating a particular series of Preferred Stock and dividends accrued thereon to the date of such payment. The holders of the Preferred Stock shall not be entitled to receive any distributive amounts upon the liquidation, dissolution or winding up of the affairs of the corporation other than the distributive amounts referred to in this section, unless otherwise provided by the board of directors in designating a particular series of Preferred Stock.

2.6 Conversion. Shares of Preferred Stock may be convertible to common stock of the corporation upon such terms and conditions, at such rate and subject to such adjustments as may be provided by the board of directors in designating a particular series of Preferred Stock.

2.7 Voting Rights. Holders of Preferred Stock shall have such voting rights as may be provided by the board of directors in designating a particular series of preferred stock.

2.8 Designation of Series A Preferred Stock. These Amended and Restated Articles of Incorporation authorize one series of preferred stock, designated as "Series A Preferred Stock" and consisting of 5,750,000 shares (the "Series A Preferred Stock"). A statement of the powers, rights, preferences, privileges and restrictions granted to or imposed upon this series of the shares of capital stock and/or the holders thereof is as follows:

2.8.1 Preference on Liquidation, etc. In the event of any voluntary or involuntary liquidation, distribution of assets (other than the payment of dividends), dissolution or winding-up of the Company (each, a "Liquidation"), before any payment or distribution of the assets of the Company (whether capital or surplus) shall be made to or set apart for the holders of shares of Common Stock, the holders of Series A Preferred Stock shall be entitled to receive payment of \$1.00 per share of Series A Preferred Stock held by them (as appropriately adjusted for any stock dividend, stock split, recapitalization or combination of shares), plus any declared but unpaid dividend per such share.

If, upon any Liquidation, the assets of the Company, or proceeds thereof, distributable among the holders of shares of Series A Preferred Stock shall be insufficient to pay in full the preferential amounts on the shares of Series A Preferred Stock, then such assets, or the proceeds thereof, shall be distributed among such holders ratably in accordance with the respective amounts which would be payable on such shares if all amounts payable thereon were paid in full.

After the payment or setting apart of payment to the holders of Series A Preferred Stock of the preferential amounts so payable to them, the remaining assets shall be distributed to the holders of the Common Stock and any other series or class of preferred stock expressly entitled to further participate in such distribution pro rata based upon the number of shares of Common Stock held by each (assuming full conversion of all shares of such preferred stock, if any). The holders of the Series A Preferred Stock shall not participate in any such distribution.

The merger, acquisition, share exchange, or other corporate transaction or series of transactions in which the shareholders of the Company immediately prior to such transaction or

transactions do not own a majority of the outstanding shares of the surviving corporation or its parent after such transaction or transactions, or any sale, lease or other disposition of all or substantially all of the Company's assets, shall be regarded as a Liquidation within the meaning of this Section 2.8.1. In any such case the liquidation preference that the holders of Series A Preferred Stock shall be entitled to receive shall be computed in the same manner as if the Company's available assets (valued at the value being given for the Company's shares or assets in such transaction) were actually being distributed to all shareholders in connection with such transaction (even though holders of Common Stock and other classes or series of preferred stock are not or may not be entitled to receive any actual distribution upon such deemed liquidation or dissolution). Notwithstanding the foregoing, the merger or consolidation of the Company into or with another corporation, or the effectuation of a statutory exchange of shares, in which the shareholders of the Company immediately prior to such transaction hold, immediately after such transaction, at least 50% of the general voting power of the surviving or acquiring entity (or a parent corporation thereof) by virtue of their ownership of the Company's equity securities, shall not be regarded as a Liquidation within the meaning of this Section 2.8.1. In addition and notwithstanding the foregoing, each holder of Series A Preferred Stock shall have the right to elect the benefits of the provisions of Section 2.8.3(a) below or other applicable conversion provisions in lieu of receiving payment on Liquidation of the Company pursuant to this Section 2.8.1.

2.8.2 Voting. In addition to the special voting rights provided by applicable law, the holders of shares of Series A Preferred Stock shall be entitled to vote upon all matters upon which holders of the Common Stock have the right to vote, and each share of Series A Preferred Stock shall be entitled to the number of votes equal to the largest number of full shares of Common Stock into which such shares of Series A Preferred Stock could be converted pursuant to the applicable provisions of Section 2.8.3 below, at the record date for the determination of the shareholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is solicited, such votes to be counted together with all other shares of capital stock having general voting powers and not separately as a class. In all cases where the holders of shares of Series A Preferred Stock have the right to vote separately as a class, such holders shall be entitled to one vote for each such share held by them respectively.

2.8.3 Conversion Rights. The Series A Preferred Stock shall be convertible into Common Stock at as follows:

(a) Voluntary Conversion. Subject to and upon compliance with the provisions of this Section 2.8.3, a holder of any shares of Series A Preferred Stock shall have the right at such holder's option, at any time or from time to time, to convert any of such shares of Series A Preferred Stock into fully paid and nonassessable shares of Common Stock at the Series A Conversion Price (as hereinafter defined) in effect on the Series A Conversion Date (as hereinafter defined) upon the terms hereinafter set forth.

(b) Automatic Conversion. Each outstanding share of Series A Preferred Stock shall automatically be converted, without any further act of the Company or its shareholders, into validly issued, fully paid and nonassessable shares of Common Stock pursuant

to the formula as set forth in subsection 2.8.3(c) upon (i) the closing of the Company's initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, with aggregate proceeds of at least \$36 million at a price of at least three times the Series A Issue Price and upon election of the holders of a majority of Series A Preferred Stock; or (ii) the vote of, or written consent by, a majority of the shares of Series A Preferred Stock then outstanding.

(c) Series A Conversion Price. Each share of Series A Preferred Stock shall be converted into that number of shares of Common Stock as is determined by dividing \$1.00 by the Series A Conversion Price (as defined below) in effect on the Series A Conversion Date (as defined below) (the "Conversion Rate"). The Conversion Price shall initially be \$1.00 for shares of Series A Preferred Stock (the "Series A Conversion Price"). The Series A Conversion Price shall be subject to adjustment as set forth in Section 2.8.3(f) below. No payment or adjustment shall be made for any dividends on the Common Stock issuable upon such conversion.

(d) Mechanics of Conversion. A holder of any shares of Series A Preferred Stock may exercise the conversion right specified in subsection 2.8.3(a) as to any part thereof by surrendering to the Company or its transfer agent the certificate or certificates for the shares to be converted, accompanied by written notice stating that the holder elects to convert all or a specified portion of the shares represented thereby. Upon the occurrence of any of the events specified in subsection 2.8.3(b), the outstanding shares of Series A Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; provided that the Company shall not be obligated to issue to any such holder certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing the shares of Series A Preferred Stock are delivered to the Company or any transfer agent of the Company.

Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of any certificates evidencing shares of Series A Preferred Stock and (in the case of loss, theft or destruction) upon delivery of an indemnity agreement (with surety if reasonably required) in an amount reasonably satisfactory to the Company, or (in the case of mutilation) upon surrender and cancellation of such certificates, the Company will issue, in lieu thereof, a new certificate of like tenor.

Conversion of the Series A Preferred Stock shall be deemed to have been effected either on the date on which the event specified with respect to such Series A Preferred Stock in subsection 2.8.3(b) shall have occurred, or on the date when delivery of notice of an election to convert and certificates for shares is made under subsection 2.8.3(a), as the case may be, and such date is referred to herein with respect to the Series A Preferred Stock as the "Series A Conversion Date." Subject to the provisions of subsection 2.8.3(f)(7), as promptly as practicable thereafter (and after surrender of the certificate or certificates representing shares of Series A Preferred Stock to the Company or its transfer agent in the case of conversions pursuant to subsection 2.8.3(b)) the Company shall issue and deliver to such holder a certificate or certificates for the number of full shares of Common Stock to which such holder is entitled and

any dividends on the Series A Preferred Stock which such holder is entitled to receive, but has not yet received.

Subject to the provisions of subsection 2.8.3(f)(7), the Person in whose name the certificate or certificates for Common Stock are to be issued shall be deemed to have become a holder of record of such Common Stock on the applicable Series A Conversion Date. Upon conversion of only a portion of the number of shares covered by a certificate representing shares of Series A Preferred Stock surrendered for conversion (in the case of conversion pursuant to subsection 2.8.3(a)), the Company shall issue and deliver to the holder of the certificate so surrendered for conversion, at the expense of the Company, a new certificate covering the number of shares of Series A Preferred Stock representing the unconverted portion of the certificate so surrendered.

(e) Fractional Shares. No fractional shares of Common Stock or scrip shall be issued upon conversion of shares of Series A Preferred Stock. If more than one share of Series A Preferred Stock shall be surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series A Preferred Stock so surrendered by such holder. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of any shares of Series A Preferred Stock, the Company shall round such fraction to the nearest whole share (such that any fraction equal or greater than one-half shall be rounded up and any fraction less than one-half shall be rounded down) and shall issue such additional share, if any, after such rounding.

(f) Conversion Price Adjustments for the Series A Preferred Stock. The Conversion Price for the Series A Preferred Stock shall be subject to adjustment from time to time as follows:

(1) Common Stock Issued at a Price Less than the Series A Conversion Price. If the Company shall issue Additional Stock (as defined below) without consideration or for a consideration per share less than the initial Conversion Price for the Series A Preferred Stock in effect immediately prior to such issuance, then the Conversion Price for such series in effect immediately prior to each such issuance shall immediately be reduced to the price (calculated to the nearest one thousandth of a cent) determined by multiplying the Series A Conversion Price by a fraction, the numerator of which shall be an amount equal to the sum of (x) the number of shares of Common Stock deemed outstanding immediately prior to such issuance (after giving effect to the conversion of the Series A Preferred Stock in effect immediately prior to such issuance) and (y) the number of shares of Common Stock that the aggregate consideration, if any, received by the Company upon such issuance would purchase at such Series A Conversion Price, (B) and the denominator of which shall be the sum of (xx) the total number of shares of Common Stock deemed outstanding immediately prior to such issuance (which includes the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock at the Series A Conversion Price in effect immediately prior to such issuance of shares of Additional Stock) and (yy) the number of shares of Additional Stock so issued.

For the purposes of any adjustment to the Series A Conversion Price pursuant to this Section 2.8.3(f)(1), the following provisions shall be applicable:

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

(B) Consideration Other Than Cash. In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, including securities acquired in exchange therefor, the consideration other than cash shall be deemed to be the fair value thereof as reasonably determined in good faith by the Board of Directors.

(C) Options and Convertible Securities. In the case of the issuance of (i) options, warrants or other rights to purchase or acquire Common Stock (whether or not at the time exercisable), (ii) securities by their terms convertible into or exchangeable for Common Stock (whether or not at the time so convertible or exercisable) or (iii) options, warrants or rights to purchase such convertible or exchangeable securities (whether or not at the time exercisable), other than options, warrants, rights or convertible or exchangeable securities which are, or when exercised or converted, would not constitute Additional Stock as defined in Section 2.8.3(f)(2), the following provisions shall apply:

(i) the aggregate maximum number of shares of Common Stock deliverable upon exercise of such options, warrants or other rights to purchase or acquire Common Stock shall be deemed to have been issued at the time such options, warrants or rights were issued and for a consideration equal to the consideration (determined in the manner provided in sub-sections (A) and (B) above), if any, received by the Company upon the issuance of such options, warrants or rights plus the minimum purchase price provided in such options, warrants or rights for the Common Stock covered thereby;

(ii) the aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities, or upon the exercise of options, warrants or other rights to purchase or acquire such convertible or exchangeable securities and the subsequent conversion or exchange thereof, shall be deemed to have been issued at the time such securities were issued or such options, warrants or rights were issued and for a consideration equal to the consideration, if any, received by the Company for any such securities and related options, warrants or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Company upon the conversion or exchange of such securities and the exercise of any related options, warrants or rights (the consideration in each case to be determined in the manner provided in subsections (A) and (B) above);

(iii) on any change in the number of shares of Common Stock deliverable upon exercise of any such options, warrants or rights or conversion of or exchange for such convertible or exchangeable securities or any change in the consideration

to be received by the Company upon such exercise, conversion or exchange, including, but not limited to, a change resulting from the anti-dilution provisions thereof, the Conversion Price for such series as then in effect shall forthwith be readjusted to such Conversion Price as would have been obtained had an adjustment been made upon the issuance of such options, warrants or rights not exercised prior to such change, or securities not converted or exchanged prior to such change, upon the basis of such change;

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

(v) if the Conversion Price for any series shall have been adjusted upon the issuance of any such options, warrants, rights or convertible or exchangeable securities, no further adjustment of such Conversion Price shall be made for the actual issuance of Common Stock upon the exercise thereof; provided, however, that no increase in the Conversion Price for any series shall be made pursuant to subsections (i) or (ii) of this Section 2.8.3(f)(1)(C).

(2) Additional Stock. "Additional Stock" shall mean any shares of Common Stock or Common Stock equivalents issued (or deemed to have been issued pursuant to Section 2.8.3(f)(1)(C) by the Company after the date of original issuance of the Series A Preferred Stock), other than securities issued by the Company (a) pursuant to stock options or awards of stock granted to the Company's officers, directors, employees, consultants and advisors pursuant to an equity plan or arrangement that is approved by the Company's Board of Directors; (b) upon conversion of the Series A Preferred Stock; (c) in connection with acquisition transactions approved by the Board of Directors; (d) to financial institutions or to lessors in connection with commercial credit arrangements, equipment financings or similar transactions entered into for primarily non-equity financing purposes and approved by the Board of Directors; (e) in connection with strategic transactions entered into for primarily non-equity financing purposes approved by the Board of Directors; and (f) shares of capital stock of the Company issued with the affirmative vote of at least 50% of the then outstanding shares of Series A Preferred Stock and approval of the Board of Directors.

(3) Stock Dividends. If the number of shares of Common Stock outstanding at any time after the date of issuance of the Series A Preferred Stock is increased by a stock dividend or other distribution on Common Stock payable in shares of Common Stock or by a subdivision, split-up or reclassification of outstanding shares of Common Stock, then immediately after the record date fixed for the determination of holders of Common Stock entitled to receive such stock dividend or the effective date of such subdivision, split-up or reclassification, as the case may be, the Series A Conversion Price shall be appropriately reduced so that the holder of any shares of Series A Preferred Stock thereafter converted shall be entitled to receive the number of shares of Common Stock which he or she would have owned

immediately following such action had such shares of Series A Preferred Stock been converted immediately prior thereto.

(4) Combination of Stock. If the number of shares of Common Stock outstanding at any time after the date of issuance of the Series A Preferred Stock is decreased by a combination or reclassification of the outstanding shares of Common Stock, then, immediately after the effective date of such combination or reclassification, the Series A Conversion Price shall be appropriately increased so that the holder of any shares of Series A Preferred Stock thereafter converted shall be entitled to receive the number of shares of Common Stock which he or she would have owned immediately following such action had such shares of Series A Preferred Stock been converted immediately prior thereto.

(5) Capital Reorganization or Reclassification. If the Common Stock issuable upon the conversion of the Series A Preferred Stock shall be changed into the same or different number of shares of any class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for elsewhere in this subsection 2.8.3(f)), then in each such event the holder of each share of Series A Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change by the holders of the number of shares of Common Stock into which such share of Series A Preferred Stock might have been converted immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein.

(6) Merger or Consolidation. If at any time or from time to time there shall be an acquisition of the Company by another entity by means of merger, consolidation or otherwise, resulting in the exchange of the outstanding shares of the Company for securities or consideration issued or caused to be issued by the acquiring entity or any of its affiliates, but not resulting in a Liquidation within the meaning of Section 2.8.1, then, as a part of such acquisition, provision shall be made so that the holders of Series A Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock, the number of shares of stock or other securities or property of the acquiring corporation resulting from such acquisition, to which such holder would have been entitled if such holder had converted its shares of Series A Preferred Stock immediately prior to such acquisition. In any such case appropriate adjustments shall be made in the application of the provisions of this subsection 2.8.3(f) with respect to the rights of the holders of the Series A Preferred Stock after such acquisition to the end that the provisions of this subsection 2.8.3(f) (including adjustment of the Series A Conversion Price then in effect and the number of shares issuable upon conversion of the Series A Preferred Stock) shall be applicable after that event in as nearly equivalent a manner as may be practicable.

(7) Rounding of Calculations; Minimum Adjustment. All calculations under this subsection (f) shall be made to the nearest cent or to the nearest one hundredth (1/100th) of a share, as the case may be.

(8) Timing of Issuance of Additional Common Stock Upon Certain Adjustments. In any case in which the provisions of this subsection 2.8.3(f) shall require that an adjustment shall become effective immediately after a record date for an event, the Company may defer until the occurrence of such event issuing to the holder of any share of Series A Preferred Stock converted after such record date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the shares of Common Stock issuable upon such conversion before giving effect to such adjustment; provided that the Company upon request shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares, and such cash, upon the occurrence of the event requiring such adjustment.

(9) Waiver of Anti-Dilution Rights. Holders of a majority of the shares of Preferred Stock that are entitled to receive the rights and benefits of this Section 2.8.3(f) may waive such rights and benefits by delivering a written notice to the Company indicating such intent.

(g) Statement Regarding Adjustments. Whenever the Series A Conversion Price shall be adjusted as provided in subsection 2.8.3(f), the Company shall forthwith file, at the office of any transfer agent for the Series A Preferred Stock and at the principal office of the Company, a statement showing in detail the facts requiring such adjustment, the method by which such adjustment was calculated (including a description of the basis on which the Board of Directors of the Company made any determination hereunder) and the Series A Conversion Price that shall be in effect after such adjustment, and the Company shall also cause a copy of such statement to be sent by mail, first-class postage prepaid, to each holder of shares of Series A Preferred Stock at its address appearing on the Company's records. Each such statement shall be signed by the Company's independent public accountants. Where appropriate, such copy may be given in advance and may be included as part of a notice required to be mailed under the provisions of subsection 2.8.3(h).

(h) Notice to Holders. In the event the Company shall propose to take any action of the type described in clause (1), (3), (4), (5), or (6) of subsection 2.8.3(f), the Company shall give notice to each holder of shares of Series A Preferred Stock, in the manner set forth in subsection 2.8.3(g), which notice shall specify the record date, if any, with respect to any such action and the approximate date on which such action is to take place. Such notice shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Series A Conversion Price and the number, kind or class of shares or other securities or property which shall be deliverable or purchasable upon the occurrence of such action or deliverable upon conversion of shares of Series A Preferred Stock. In the case of any action which would require the fixing of a record date, such notice shall be given at least 15 days prior to the date so fixed, and in case of all other action, such notice shall be given at least 20 days prior to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

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

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

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

(l) Valid Issuance. All shares of Common Stock which may be issued upon conversion of the shares of Series A Preferred Stock will be, upon issuance by the Company, duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issuance thereof and the Company shall take no action which will cause a contrary result (including without limitation, any action which would cause the Series A Conversion Price to be less than the par value, if any, of the Common Stock).

2.8.4 Redemption. The Company shall have no obligation to redeem the Series A Preferred Stock, in whole or in part.

2.8.5 Dividends. Series A Preferred Shareholders are only entitled to dividends upon Board approval.

2.8.6 Retirement of Shares. Shares of Series A Preferred Stock which have been issued and have been redeemed, repurchased or reacquired in any manner by the Company shall be retired and shall not be reissued.

2.8.7 General Provisions.

(a) The term "Person" as used herein means any corporation, partnership, trust, organization, association, other entity or individual.

(b) The term "outstanding," when used with reference to shares of stock, shall mean issued shares, excluding shares held by the Company or a subsidiary.

(c) All accounting terms used herein and not expressly defined herein shall have the meanings given to them in accordance with generally accepted accounting principles.

(d) The headings of the sections, subsections, clauses and subclauses herein are for convenience of reference only and shall not define, limit or affect any of the provisions hereof.