

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

EPAS ID: PAT3679176

SUBMISSION TYPE:	NEW ASSIGNMENT	
NATURE OF CONVEYANCE:	CHANGE OF NAME	
CONVEYING PARTY DATA		
	Name	Execution Date
	SOLAICX, INC.	04/16/2010
RECEIVING PARTY DATA		
Name:	SOLAICX	
Street Address:	13736 RIVERPORT DRIVE, SUITE 1000	
City:	MARYLAND HEIGHTS	
State/Country:	MISSOURI	
Postal Code:	63043	
PROPERTY NUMBERS Total: 7		
Property Type	Number	
Patent Number:	7635414	
Patent Number:	8257496	
Patent Number:	8262797	
Patent Number:	8317919	
Application Number:	13604277	
Application Number:	13688969	
Application Number:	13689189	
CORRESPONDENCE DATA		
Fax Number:	(314)612-2307	
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>		
Phone:	314-621-5070	
Email:	uspatents@armstrongteasdale.com	
Correspondent Name:	RICHARD A. SCHUTH	
Address Line 1:	ARMSTRONG TEASDALE LLP	
Address Line 2:	7700 FORSYTH BLVD., SUITE 1800	
Address Line 4:	ST. LOUIS, MISSOURI 63105	
ATTORNEY DOCKET NUMBER:	33837-1	
NAME OF SUBMITTER:	RICHARD A. SCHUTH	
SIGNATURE:	/Richard A. Schuth/	
DATE SIGNED:	01/04/2016	

PATENT

Total Attachments: 46

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in the office of the Secretary of State
of the State of California

APR 16 2010

2378546

EIGHTH AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

SOLAICX

The undersigned, David Ranhoff and Guy Anthony, do hereby certify that:

ONE: They are the duly elected and acting (A) President and Chief Executive Officer and (B) Secretary, respectively, of said corporation.

TWO: The Articles of Incorporation of said corporation shall be amended and restated to read in full as follows:

EIGHTH AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

SOLAICX

ARTICLE I

The name of this corporation is Solaicx.

ARTICLE II

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

ARTICLE III

A. **Classes of Stock.** This corporation is authorized to issue two classes of stock of no par value to be designated respectively as common stock ("Common Stock") and preferred stock ("Preferred Stock"). The total number of shares which this corporation is authorized to issue is 100,000,000 shares, of which 55,000,000 shares shall be Common Stock, and 45,000,000 shares shall be Preferred Stock, 2,000,000 of which shall be designated Series 1 Preferred Stock (the "Series 1 Preferred Stock") and 43,000,000 of which shall be designated Series 2 Preferred Stock (the "Series 2 Preferred Stock").

Upon the filing of these Eighth Amended and Restated Articles of Incorporation (the "Effective Time"), (1) each 21.123229 shares of Series 1 Preferred Stock, then issued and outstanding, and each 21.123229 shares of Series 1 Preferred Stock issuable upon the exercise of any

then-outstanding stock options, warrants or other right to acquire Series 1 Preferred Stock (the "Pre-Split Series 1 Preferred"), will be combined, automatically and without further action required on the part of this corporation or the holders thereof, into one share of Series 1 Preferred Stock (the "Post-Split Series 1 Preferred") and (2) each 54.098284 shares of Common Stock outstanding, and each 54.098284 shares of Common Stock issuable upon the exercise of any then-outstanding stock options, warrants or other right to acquire Common Stock (the "Pre-Split Common" and together with the Pre-Split Series 1 Preferred, the "Pre-Split Shares"), will be combined, automatically and without further action on the part of this corporation or the holders thereof, into one share of Common Stock (the "Post-Split Common" and together with the Post-Split Series 1 Preferred, the "Post-Split Shares") (with the combination of each of the outstanding shares into one share as described in clauses (1) and (2) above, the "Reverse Split").

Any stock certificate that, immediately prior to the Effective Time, represented any class or series of Pre-Split Shares will, from and after the Effective Time, automatically and without the necessity of presenting the same for exchange, represent the class or series of Post-Split Shares, as applicable, determined by applying the conversion and combination provisions of the Reverse Split.

The Reverse Split will be effected on a certificate-by-certificate basis. This corporation shall not be obliged to issue new certificates evidencing the Post-Split Shares outstanding as a result of the Reverse Split unless and until the certificates evidencing Pre-Split Shares held by a holder are delivered to this corporation, or such holder notifies this corporation that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to this corporation to indemnify this corporation from any loss incurred by it in connection with such certificates.

No fractional share interests will result from the Reverse Split. Shareholders who otherwise would have been entitled to receive any fractional interests of Post-Split Shares shall, in lieu of receipt of such fractional interest, be entitled to receive from this corporation an amount in cash equal to the product obtained by multiplying the fair value of one share of Common Stock by such fractional interest resulting from the Reverse Split of Common Stock and the fair value of one share of Series 1 Preferred Stock by such fractional interest resulting from the Reverse Split of the Pre-Split Series 1 Preferred, as applicable. Every share number, dollar amount and other provision contained in these Eighth Amended and Restated Articles of Incorporation has been adjusted for the Reverse Split and there shall be no further adjustments made to such share numbers, dollar amounts or other provisions, except in the case of any stock splits, stock dividends, reclassifications and the like occurring after the date of filing of these Eighth Amended and Restated Articles of Incorporation. Except where otherwise indicated, all references to "Series 1 Preferred Stock" and "Common Stock" that follow in these Eighth Amended and Restated Articles of Incorporation shall be to the Post-Split Series 1 Preferred and the Post-Split Common, respectively, and as adjusted for the Reverse Split.

B. Rights, Preferences and Restrictions of the Preferred Stock. The rights, preferences, restrictions and other matters relating to the Preferred Stock are as follows:

1. Dividend Provisions.

- a. The holders of shares of Series 2 Preferred Stock shall be entitled to

receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend on the Common Stock or the Series 1 Preferred Stock, payable at the rate of \$0.144 per share per annum (as adjusted for any stock splits, dividends, combinations, recapitalizations or the like, except for the Reverse Split), payable when, as and if declared by the Board of Directors. Such dividends shall be noncumulative. Any partial payment of any dividend shall first be made ratably among the holders of Series 2 Preferred Stock in proportion to the payment that each such holder is otherwise entitled to receive. Unless full dividends on the Series 2 Preferred Stock shall have been paid or declared and set apart during the then-current fiscal year, no dividends shall be paid or declared and no distribution shall be made on the Series 1 Preferred Stock and the Common Stock.

b. Subject to Section 1.a above, the holders of shares of Series 1 Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend on the Common Stock, payable at the rate of \$2.112 per share per annum (as adjusted for any stock splits, dividends, combinations, recapitalizations or the like, except for the Reverse Split), payable when, as and if declared by the Board of Directors. Such dividends shall be noncumulative. Subject to Section 1.a above; any partial payment of any dividend shall first be made ratably among the holders of Series 1 Preferred Stock in proportion to the payment that each such holder is otherwise entitled to receive. Unless full dividends on the Series 1 Preferred Stock shall have been paid or declared and set apart during the then-current fiscal year, no dividends shall be paid or declared and no distribution shall be made on the Common Stock.

c. No dividends or other distributions shall be made with respect to the Common Stock unless the full preferential dividends of the Preferred Stock set forth in Sections 1.a and 1.b above shall have first been declared and paid. In the event dividends are paid on any share of Common Stock, this corporation shall pay an additional dividend on all outstanding shares of Preferred Stock in a per share amount equal (on an as converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

d. Whenever a dividend provided for in this Section 1 shall be payable in property other than cash, the value of such dividend shall be deemed to be the fair market value of such property as determined by the Board of Directors (whose good faith determination shall be conclusive).

2. Liquidation Preference.

a. In the event of any liquidation, dissolution or winding up of this corporation, either voluntary or involuntary, the holders of Series 2 Preferred Stock shall be entitled to receive prior and in preference to any distribution of any of the assets of this corporation to the holders of the Series 1 Preferred Stock and the Common Stock, by reason of their ownership thereof, an amount per share equal to the sum of (i) \$1.80 for each outstanding share (as adjusted for any stock splits, dividends, combinations, recapitalizations or the like, except for the Reverse Split) and (ii) any declared but unpaid dividends, on each such share. If upon the occurrence of such event, the assets and funds of this corporation legally available for distribution to the holders of Series 2 Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid

preferential amounts, then the entire assets and funds of this corporation legally available for distribution shall be distributed among the holders of Series 2 Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled.

b. After the payment to the holders of Series 2 Preferred Stock of the full amount specified in Section 2.a above, in the event of any liquidation, dissolution or winding up of this corporation, either voluntary or involuntary, the holders of Series 1 Preferred Stock shall be entitled to receive prior and in preference to any distribution of any of the assets of this corporation to the holders of Common Stock, by reason of their ownership thereof, an amount per share equal to the sum of (i) \$2.592 for each outstanding share (as adjusted for any stock splits, dividends, combinations, recapitalizations or the like, except for the Reverse Split) and (ii) any declared but unpaid dividends, on each such share. If upon the occurrence of such event, the remaining assets and funds of this corporation legally available for distribution to the holders of Series 1 Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts and after the payment to the holders of Series 2 Preferred Stock of the full amount specified in Section 2.a above, the entire remaining assets and funds of this corporation legally available for distribution shall be distributed among the holders of Series 1 Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled.

c. Upon the completion of the distributions required by Sections 2.a and 2.b above, all of the remaining assets of this corporation available for distribution to shareholders shall be distributed ratably among the holders of the Preferred Stock and Common Stock in proportion to the number of shares of Common Stock owned by each such holder (as calculated on an as converted to Common Stock basis).

d. (i) For purposes of this Section 2, a Change of Control shall be deemed to be a liquidation, dissolution or winding up of this corporation; *provided, however*, that holders of at least a majority of the outstanding shares of Preferred Stock, voting together as a single class (on an as converted to Common Stock basis), may by vote or written consent exclude a particular transaction or series of transactions above from being declared a liquidation, dissolution or winding up. A "Change of Control" shall mean (A) any consolidation or merger of this corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which the shareholders of this corporation (or their affiliates) immediately prior to such consolidation, merger or reorganization, own less than 50% of the voting power of the surviving entity (or in the event stock or ownership interests of an affiliated entity are issued in such transaction, less than 50% of the voting power of such affiliated entity) immediately after such consolidation, merger or reorganization; (B) any transaction or series of related transactions in which in excess of 50% of this corporation's outstanding voting power is transferred; (C) a sale or other disposition of all or substantially all of the assets of this corporation; or (D) a sale or other disposition of, or the grant of an exclusive license to, substantially all of the intellectual property of this corporation; provided that a liquidation, dissolution or winding up of this corporation shall not include (i) any consolidation, merger or reorganization effected exclusively to change the domicile of this corporation or (ii) any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by this corporation or any successor or indebtedness of this corporation is cancelled or converted or a combination thereof.

(ii) In any of such events, if the consideration received by this corporation is other than cash, its value will be deemed its fair market value as determined by the Board of Directors (whose good faith determination shall be conclusive). Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the 30-day period ending three days prior to the closing of such transaction;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the 30-day period ending three days prior to the closing of such transaction; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors (whose good faith determination shall be conclusive).

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined by the Board of Directors (whose good faith determination shall be conclusive).

(iii) This corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than 20 days prior to the shareholders' meeting called to approve such transaction, or 20 days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and this corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than 20 days after this corporation has given the first notice provided for herein or sooner than 10 days after this corporation has given notice of any material changes provided for herein. The time periods set forth in this Section 2.d(iii) may be shortened or waived upon the written consent of the holders of Preferred Stock that represent at least two-thirds of the voting power of all then outstanding shares of such Preferred Stock, each series voting together as a single class (on an as converted to Common Stock basis).

3. **Redemption.** The Common Stock and the Preferred Stock shall not be redeemable or subject to redemption, whether at the option of this corporation or any holder thereof, or otherwise.

4. **Conversion.** The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

a. **Right to Convert.**

(i) Each share of Series 2 Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of this corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.80 (the "Original Series 2 Issue Price") by the Conversion Price applicable to such share, determined as hereafter provided, at the time in effect for such series. As of the date of the filing of these Eighth Amended and Restated Articles of Incorporation, the Conversion Price per share for shares of Series 2 Preferred Stock shall be the Original Series 2 Issue Price; *provided, however*, that the Conversion Price for the Series 2 Preferred Stock shall be subject to adjustment as set forth in Section 4.

(ii) Each share of Series 1 Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of this corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.80 (the "Original Series 1 Issue Price") by the Conversion Price applicable to such share, determined as hereafter provided, at the time in effect for such series. As of the date of the filing of these Eighth Amended and Restated Articles of Incorporation, the Conversion Price per share for shares of Series 1 Preferred Stock shall be the Original Series 1 Issue Price; *provided, however*, that the Conversion Price for the Series 1 Preferred Stock shall be subject to adjustment as set forth in Section 4.

b. **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for the applicable series of Preferred Stock: (i) immediately upon this corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended, (the "Securities Act") with (A) the public offering price of which was not less than \$5.00 per share (adjusted to reflect subsequent stock splits, dividends, combinations, recapitalizations or the like, except for the Reverse Split), and a total offering size of at least \$30,000,000, after deducting underwriters' commissions and expenses, and (B) the listing of such shares on the Nasdaq Global Market, the New York Stock Exchange, or such other national securities exchange as determined by the Board of Directors (a "Qualifying IPO") and (ii) the date authorized by the vote of or specified by written consent of the holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a single class on an as converted into Common Stock basis. Any authorization or action taken under this Section 4.b by the holders of at least a majority of the outstanding shares of Preferred Stock shall be binding on all holders of Preferred Stock, regardless of whether or not they authorized or participated in the vote on or written consent of the automatic conversion.

c. **Mechanics of Conversion.** Except upon an automatic conversion pursuant to Section 4.b above, before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of this corporation or of any transfer agent for the Preferred

Stock, and shall give written notice to this corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

d. Conversion Price Adjustments of Preferred Stock for Splits and Combinations.

(i) In the event this corporation should at any time or from time to time after the date of the filing of these Eighth Amended and Restated Articles of Incorporation (the "Purchase Date") fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(ii) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for each series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

e. Other Distributions. In the event this corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4.d(i), then, in each such case for the purpose of this Section 4.e, the holders of Preferred

Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of this corporation entitled to receive such distribution.

f. **Recapitalizations.** If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or Section 2) provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of this corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of the Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares of Common Stock issuable upon conversion of the Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

g. **Sale of Shares Below the Preferred Stock Conversion Price.**

(i) **Conversion Price Adjustments.**

(A) If at any time or from time to time after the Purchase Date, this corporation issues or sells, or is deemed by the express provisions of this subsection 4.g to have issued or sold, Additional Shares of Common Stock (as defined in Section 4.g(iv) below), other than as a dividend or other distribution on any class of stock as provided in Section 4.d above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4.d above, for an Effective Price (as defined in Section 4.g(iv) below) less than the then effective Conversion Price for the Series 1 Preferred Stock, then and in each such case the then existing Conversion Price for the Series 1 Preferred Stock shall be reduced, as of the date of such issue or sale, as determined by multiplying the Conversion Price for the Series 1 Preferred Stock by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (as defined in Section 4.g(ii)) by this corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Preferred Stock could be converted if fully converted on the day immediately preceding the sale of the Additional Shares of Common Stock, and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, warrants, options and convertible securities outstanding on the day immediately preceding the given date.

(B) If at any time or from time to time after the Purchase Date, this corporation issues or sells, or is deemed by the express provisions of this subsection 4.g to have issued or sold, Additional Shares of Common Stock (as defined in Section 4.g(iv) below), other than as a dividend or other distribution on any class of stock as provided in Section 4.d above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4.d above, for an Effective Price (as defined in Section 4.g(iv) below) less than the then effective Conversion Price for the Series 2 Preferred Stock, then and in each such case the then existing Conversion Price for the Series 2 Preferred Stock shall be reduced, as of the date of such issue or sale, as determined by multiplying the Conversion Price for the Series 2 Preferred Stock by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (as defined in Section 4.g(ii)) by this corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Preferred Stock could be converted if fully converted on the day immediately preceding the sale of the Additional Shares of Common Stock, and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, warrants, options and convertible securities outstanding on the day immediately preceding the given date.

(ii) For the purpose of making any adjustment required under this Section 4.g, the consideration received by this corporation for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by this corporation after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by this corporation in connection with such issue or sale but without deduction of any expenses payable by this corporation, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined by the Board of Directors (whose good faith determination shall be conclusive), and (C) if Additional Shares of Common Stock, Convertible Securities (as defined in Section 4.g(iii)) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of this corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined by the Board of Directors (whose good faith determination shall be conclusive) to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of the adjustment required under this Section 4.g, if this corporation issues or sells (A) stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") or (B) rights, warrants or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the Conversion Price, in each case this corporation shall be deemed to have issued at the time of the issuance of such rights, warrants or options or Convertible Securities

the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by this corporation for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to this corporation upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to this corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; *provided* that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, this corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses; *provided further* that if the minimum amount of consideration payable to this corporation upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; *provided further* that if the minimum amount of consideration payable to this corporation upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to this corporation upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Conversion Price, as adjusted upon the issuance of such rights, warrants, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights, warrants or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Conversion Price as adjusted upon the issuance of such rights, warrants, options or Convertible Securities shall be readjusted to the Conversion Price to reflect the issuance of only the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights, warrants or options or rights of conversion of such Convertible Securities.

(iv) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by this corporation or deemed to be issued pursuant to this Section 4.g, other than:

- (A) shares of Common Stock issued upon conversion of the Preferred Stock;
- (B) shares of capital stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Purchase Date;
- (C) shares of Common Stock issued pursuant to a transaction described in Section 4.d or 4.e;
- (D) shares of capital stock, or options or warrants to purchase capital stock, issuable or issued to financial institutions, customers, partners, vendors, lenders, developers, equipment lessors or lessors in connection with commercial arrangements,

equipment financings, lease transactions or similar transactions pursuant to arrangements or agreements, in each case which has been approved by the Board of Directors;

(E) shares of Common Stock issuable or issued to employees, consultants and directors directly or pursuant to plans, arrangements or agreements unanimously approved by the Board of Directors;

(F) shares of capital stock or options or warrants to purchase capital stock issued for consideration other than cash in connection with an acquisition by this corporation, whether by merger, consolidation, sale of assets or sale or exchange of stock, in each case which has been approved by the Board of Directors;

(G) shares of capital stock or options or warrants to purchase capital stock issued pursuant to transactions that have been expressly exempted from application of this Section 4.g by the vote or written consent of at least a majority of the outstanding shares of Preferred Stock (voting together as a single class on an converted to Common Stock basis), which exemption may be prospective or retroactive;

(H) shares of capital stock or options or warrants to purchase capital stock issued pursuant to any consolidation, merger or reorganization effected exclusively to change the domicile of this corporation approved by the Board of Directors;

(I) shares of Common Stock offered in connection with a Qualifying IPO; and

(J) any shares of Preferred Stock or shares of Common Stock issued upon conversion of any right, option or warrant issued to Piper Jaffray & Co. ("Piper") prior to the Purchase Date pursuant to that letter agreement between the Company and Piper dated October 12, 2006.

References to Common Stock in the subsections of this clause (iv) above shall mean all shares of Common Stock issued by this corporation or deemed to be issued pursuant to this Section 4.g. The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by this corporation under this Section 4.g, into the aggregate consideration received, or deemed to have been received by this corporation for such issue under this Section 4.g, for such Additional Shares of Common Stock.

h. No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of Preferred Stock. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion. In lieu of any fractional share to which the holder would otherwise be entitled, this corporation shall pay the holder cash equal to the product of such fraction

multiplied by the Common Stock's fair market value as determined by the Board of Directors (whose good faith determination shall be conclusive) as of the date of conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of a series of Preferred Stock pursuant to this Section 4, this corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of the effected series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing the facts upon which such adjustment or readjustment is based.

i. **No Adjustments in Conversion Price Less Than One Cent.** No adjustment of the Conversion Price for the Preferred Stock shall be made in an amount less than \$0.01 per share, *provided* that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment or conversion made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

j. **Notices of Record Date.** In the event of any taking by this 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 (other than a cash dividend) or other distribution, 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, this corporation shall mail to each holder of Preferred Stock, at least 20 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

k. **Reservation of Stock Issuable Upon Conversion.** This corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, in addition to such other remedies as shall be available to the holders of Preferred Stock, this corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these amended and restated articles of incorporation.

l. **Notices.** Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be deemed given on the date deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of this corporation.

5. Voting Rights.

a. **General.** The holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such share of Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the bylaws of this corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded upward to the nearest whole number.

b. **Board of Directors.** The Board of Directors shall consist of seven (7) members and shall be elected as follows:

(i) The holders of Preferred Stock, voting together as a separate single class, shall be entitled to elect five (5) members of the Board of Directors at each regular or special meeting of this corporation's shareholders or by written consent of this corporation's shareholders for the election of directors and to remove from office such director and fill any vacancy caused by the resignation, death or removal of such director;

(ii) The holders of Common Stock, voting together as a separate single class, shall be entitled to elect one (1) member of the Board of Directors at each regular or special meeting of this corporation's shareholders or by written consent of this corporation's shareholders for the election of directors and to remove from office such director and fill any vacancy caused by the resignation, death or removal of such director; and

(iii) The holders of Preferred Stock and the holders of Common Stock, voting together as a single class and on an as-converted basis, shall be entitled to elect one (1) member of the Board of Directors, who shall be an outside independent director, at each regular or special meeting of this corporation's shareholders or by written consent of this corporation's shareholders for the election of directors and to remove from office such director and fill any vacancy caused by the resignation, death or removal of such director.

6. Protective Provisions.

a. So long as at least 6,000,000 shares of Preferred Stock remain outstanding (adjusted to reflect subsequent stock splits, dividends, combinations, recapitalizations or the like, except for the Reverse Split), this corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent) of the holders of at least a majority of the then outstanding shares of Preferred Stock (voting together as a single class on an as converted to Common Stock basis):

(i) amend these Eighth Amended and Restated Articles of Incorporation or the Bylaws of this corporation in a manner that adversely affects the rights, preferences or privileges of the Preferred Stock;

(ii) reclassify any outstanding shares of securities of this corporation into shares having rights, preferences or privileges senior to or on a parity with the Preferred Stock or authorize or issue any security having rights, privileges or preferences senior to or on a parity with the Preferred Stock;

(iii) effect any liquidation, dissolution or winding up of this corporation or a Change of Control (as defined in Section 2.d(i) above);

(iv) effect a recapitalization of this corporation;

(v) declare or pay any dividends with respect to Common Stock or Preferred Stock (other than a dividend payable solely in shares of Common Stock);

(vi) increase or decrease the authorized number of shares of Common Stock;

(vii) redeem any shares of its capital stock, except upon any redemption of shares of Common Stock from directors, officers, employees and consultants upon termination of their employment or service pursuant to agreements providing for such repurchase and repurchase of shares of Common Stock in exercise of this corporation's right of first refusal to repurchase such shares;

(viii) change the number of directors serving on the Board of Directors;

(ix) file for voluntary bankruptcy; or

(x) lease all or substantially all of the assets of this corporation.

7. **Status of Converted Stock.** In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by this corporation.

C. Common Stock.

1. **Dividend Rights.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends and as provided in Section B(1) of this Article III, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of this corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. **Liquidation Rights.** Upon the liquidation, dissolution or winding up of this corporation, the assets of this corporation shall be distributed as provided in Section B(2) of this Article III.

3. **Voting Rights.** The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any shareholders' meeting in accordance with the

bylaws of this corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE IV

A. **Liability Limitation.** The liability of the directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

B. **Indemnification.** This corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through bylaw provisions, agreements with the agents, vote of shareholders or disinterested directors, or otherwise in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject only to applicable limits set forth in Section 204 of the California Corporations Code with respect to actions for breach of duty to this corporation and its shareholders. If, after the effective date of this Article, California law is amended in a manner which permits a company to limit the monetary or other liability of its directors or to authorize indemnification of, or advancement of such defense expenses to, its directors or other persons, in any such case to a greater extent than is permitted on such effective date, the references in this Article to "California law" shall to that extent be deemed to refer to California law as so amended.

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

* * *

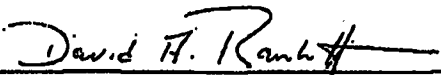
THREE: The foregoing amendment has been approved by the Board of Directors of said corporation.

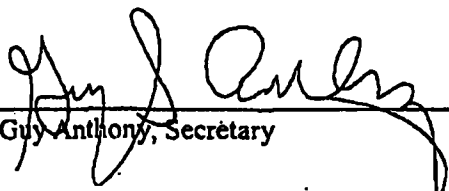
FOUR: The foregoing amendment was approved by the holders of the requisite number of shares of said corporation in accordance with Sections 902 and 903 of the California General Corporation Law; the total number of outstanding shares of each class entitled to vote with respect to the foregoing amendment was 26,041,872 shares of Common Stock and 36,155,208 shares of Series 1 Preferred Stock. The number of shares voting in favor of the foregoing amendment equaled or exceeded the vote required, such required vote being a majority of the outstanding Common Stock and Series 1 Preferred Stock (voting together as a single class and on an as-converted to Common Stock basis), a majority of the outstanding shares of Series 1 Preferred Stock (voting as a single class) and a majority of the outstanding shares of Common Stock (voting as a single class).

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The undersigned further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of their own knowledge.


Dated: April 16, 2010


David Ranhoff, President and CEO

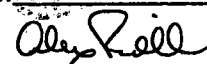

Guy Anthony, Secretary



I hereby certify that the foregoing
transcript of 110 page(s)
is a full, true and correct copy of the
original record in the custody of the
California Secretary of State's office.

DEC 11 2015 

Date: _____



ALEX PADILLA, Secretary of State

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FILED

in the office of the Secretary of State
of the State of California2378546 sur
AGREEMENT OF MERGER

This Agreement of Merger (this "Agreement"), is made as of July 1, 2010, by and among Oscar Acquisition Sub, Inc., a California corporation ("Acquisition Subsidiary") and a wholly owned subsidiary of MEMC Electronic Materials Inc., a Delaware corporation ("Parent"), and Solaicx, a California corporation (the "Company").

JUL 01 2010

RECITALS

A. Parent, Acquisition Subsidiary and the Company have entered into an Agreement and Plan of Merger (the "Merger Agreement"), dated as of May 21, 2010, by and among Parent, Acquisition Subsidiary, the Company and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as initial Representative, providing for, among other things, the execution and filing of this Agreement and the Merger (defined below).

B. The Boards of Directors of Parent, Acquisition Subsidiary and the Company have approved a merger pursuant to which the Company shall be acquired through a merger of Acquisition Subsidiary with and into the Company, with the Company continuing as the surviving corporation and a wholly owned subsidiary of Parent (the "Merger").

C. The defined terms set forth on Exhibit A are hereby incorporated herein.

AGREEMENTS

The parties hereto have agreed as follows:

1.1 Merger and Effect of Merger.

(a) The constituent entities of the Merger are the Company and Acquisition Subsidiary.

(b) Upon the terms and subject to the conditions hereof, and in accordance with the California Corporations Code (the "Act"), at the Effective Time, Acquisition Subsidiary shall be merged into the Company and the separate existence of Acquisition Subsidiary thereupon shall cease. The Company shall be the surviving company in the Merger (the "Surviving Company"), and the separate existence of the Company, with all its rights, privileges, powers and franchises, shall continue unaffected and unimpaired by the Merger.

(c) At and after the Effective Time, the Surviving Company shall possess all the rights, privileges, powers and franchises and be subject to all the restrictions, liabilities and duties of both Acquisition Subsidiary and the Company, as provided more particularly in the Act.

1.2 Method of Effecting Merger. The Merger shall become effective and be consummated immediately upon the acceptance of the filing of this Agreement with the Secretary of State of California (the "Effective Time").

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1.3 Conversion of Acquisition Subsidiary Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of any holder thereof, the issued and outstanding capital stock of Acquisition Subsidiary shall be converted into one validly issued, fully paid and nonassessable share of common stock in the Surviving Company and, upon surrender of the certificate or certificates representing such common stock of Acquisition Subsidiary, the Surviving Company shall promptly issue to Parent or its designated affiliate a certificate representing the common stock in the Surviving Company into which it has been converted. After the Effective Time such share of common stock shall be the only issued and outstanding equity interest of the Surviving Company and shall be owned by Parent or its designated affiliate.

1.4 Merger Consideration.

(a) For purposes of this Agreement, the "Merger Consideration" shall be calculated as follows:

(i) Initial Cash Payment. Fifty-Two Million Six Hundred Fifty-Eight Thousand Dollars (\$52,658,000.00) in cash; plus

(ii) Escrow Release. Any cash amounts released from the Indemnification Escrow Account and delivered to the Securityholders upon the expiration of the Indemnification Escrow Account (the "Indemnification Escrow Release Amount"); plus

(iii) Expense Escrow Amount Deposit. \$1,000,000 in cash, to be deposited in the Expense Escrow Fund at the closing of the Merger ("Closing") and distributed in accordance with the terms hereof and the terms of the Expense Escrow Agreement (the "Expense Escrow Amount"); and

(iv) Net Working Capital Adjustment. (A) less an amount in cash equal to the amount, if any, by which the Net Working Capital as of the Closing is less than the Target Net Working Capital, or (B) plus an amount in cash equal to the amount, if any, by which the Net Working Capital as of the Closing is greater than the Target Net Working Capital (the "Positive Net Working Capital Adjustment"); less

(v) Indebtedness Adjustment. An amount in cash equal to the aggregate amount of any Indebtedness of the Company as of immediately prior to the Effective Time, less

(vi) Transaction Expense Adjustment. An amount in cash equal to the aggregate amount of Transaction Expenses; plus

(vii) New Investment Adjustment. An amount in cash equal to the New Investment Adjustment Amount, if any, less the amount of the Positive Net Working Capital Adjustment, provided that such amount shall not be less than zero, if any; plus

(viii) Earnout Consideration. The amount, if any, of the Earnout Consideration, which shall be paid, if at all, at the time and in the manner set forth in Section 1.13.

(b) The Merger Consideration shall be subject to adjustments as agreed upon by the parties.

1.5 Effect on Shares.

(a) Subject to the terms of this Section 1.5, at the Effective Time, by virtue of the Merger and without any action on the part of any holder thereof,

(i) each Share of Series 2 Preferred Stock of the Company ("Series 2 Preferred Stock") issued and outstanding immediately prior to the Effective Time (other than Shares to be cancelled pursuant to and in accordance with Section 1.5(c) and Dissenting Shares, if any) shall be converted into and become the right to receive:

(A) an amount in cash equal to the Series 2 Preferred Stock Exchange Amount, plus an amount, if any, payable in respect of each share of Series 2 Preferred Stock pursuant to the terms of Section 1.7; plus

(B) an amount in cash, if any, as is payable with respect to a positive working capital adjustment, if any; plus

(C) an amount in cash, if any, as is payable with respect to any remaining Indemnification Escrow Amount in accordance with certain terms agreed-upon by the parties and the Indemnification Escrow Agreement; plus

(D) an amount in cash and (if applicable) shares of Parent Common Stock, if any, as is payable and/or issuable with respect to the Earnout Consideration pursuant to and in accordance with the terms of Section 1.13 hereof; plus

(E) an amount in cash, if any, as is payable with respect to any remaining Expense Escrow Amount and the Representative Expense Escrow Agreement.

(ii) each Share of Series 1 Preferred Stock of the Company ("Series 1 Preferred Stock") issued and outstanding immediately prior to the Effective Time (other than Shares to be cancelled pursuant to and in accordance with Section 1.5(c) and Dissenting Shares, if any) shall be converted into and become the right to receive:

(A) an amount in cash equal to the Series 1 Preferred Stock Exchange Amount, plus an amount, if any, payable in respect of each share of Series 1 Preferred Stock pursuant to the terms of Section 1.7; plus

(B) an amount in cash, if any, as is payable with respect to a positive working capital adjustment, if any; plus

(C) an amount in cash, if any, as is payable with respect to any remaining Indemnification Escrow Amount in accordance with certain terms agreed-upon by the parties and the Indemnification Escrow Agreement; plus

(D) an amount in cash and (if applicable) shares of Parent Common Stock, if any, as is payable and/or issuable with respect to the Earnout Consideration pursuant to and in accordance with the terms of Section 1.13 hereof; plus

(E) an amount in cash, if any, as is payable with respect to any remaining Expense Escrow Amount and the Representative Expense Escrow Agreement.

(iii) each Share of common stock of the Company ("Common Stock") issued and outstanding immediately prior to the Effective Time (other than Shares to be cancelled pursuant to and in accordance with Section 1.5(c) and Dissenting Shares, if any) shall be converted into and become the right to receive:

(A) an amount in cash equal to the Common Stock Exchange Amount, plus an amount, if any, payable in respect of each share of Common Stock pursuant to the terms of Section 1.7; plus

(B) an amount in cash, if any, as is payable with respect to a positive working capital adjustment, if any; plus

(C) an amount in cash, if any, as is payable with respect to any remaining Indemnification Escrow Amount in accordance with certain terms agreed-upon by the parties and the Indemnification Escrow Agreement; plus

(D) an amount in cash as is payable with respect thereto as Earnout Consideration, if any, pursuant to and in accordance with the terms of Section 1.13 hereof; plus

(E) an amount in cash, if any, as is payable with respect to any remaining Expense Escrow Amount and the Representative Expense Escrow Agreement.

(b) For purposes of Section 1.5(a) of this Agreement:

(i) "Adjusted Initial Merger Consideration" shall mean an amount equal to the sum of (A) Initial Merger Consideration and (B) the Aggregate Exercise Price Amount.

(ii) "Aggregate Exercise Price Amount" shall mean the aggregate dollar amount payable to the Company as the purchase price for the exercise of (A) each Company Option which remains outstanding and unexercised as of immediately prior to the Effective Time with a per share exercise price that is less than \$3.00, and (B) each

Company Warrant which remains outstanding and unexercised as of immediately prior to the Effective Time with a per share exercise price that is less than \$3.00.

(iii) "Aggregate Residual Amount" shall mean an amount equal to (A) the Adjusted Initial Merger Consideration, less (B) the Aggregate Preferred Stock Liquidation Preference Amount.

(iv) "Aggregate Preferred Stock Liquidation Preference Amount" shall mean the sum of:

(A) the product obtained by multiplying (x) the Series 1 Preferred Stock Liquidation Preference Amount by (y) the sum of (I) the aggregate number of shares of Series 1 Preferred Stock outstanding as of immediately prior to the Effective Time and (II) the aggregate number of shares of Series 1 Preferred Stock issuable upon the exercise in full of each Company Warrant which (1) is exercisable for shares of Series 1 Preferred Stock (2) remains outstanding and unexercised as of immediately prior to the Effective Time and (3) has a per share exercise price that is less than \$3.00; plus

(B) the product obtained by multiplying (x) the Series 2 Preferred Stock Liquidation Preference Amount by (y) the sum of (I) the aggregate number of shares of Series 2 Preferred Stock outstanding as of immediately prior to the Effective Time and (II) the aggregate number of shares of Series 2 Preferred Stock issuable upon the exercise in full of each Company Warrant which (1) is exercisable for shares of Series 2 Preferred Stock (2) remains outstanding and unexercised as of immediately prior to the Effective Time and (3) has a per share exercise price that is less than \$3.00.

(v) "Fully Diluted Company Share Amount" shall mean the sum (without duplication) of the following:

(A) the aggregate number of shares of Common Stock outstanding as of immediately prior to the Effective Time;

(B) the aggregate number of shares of Common Stock issuable upon the conversion in full of any and all shares of Series 1 Preferred Stock outstanding as of immediately prior to the Effective Time;

(C) the aggregate number of shares of Common Stock issuable upon the conversion in full of any and all shares of Series 2 Preferred Stock outstanding as of immediately prior to the Effective Time;

(D) the aggregate number of shares of Common Stock issuable upon the exercise in full of each Company Option which remains outstanding and unexercised as of immediately prior to the Effective Time with a per share exercise price that is less than \$3.00;

(E) the aggregate number of shares of Common Stock issuable upon the exercise in full of each Company Warrant which (1) is exercisable for shares of Common Stock (2) remains outstanding and unexercised as of immediately prior to the Effective Time and (3) has a per share exercise price that is less than \$3.00; and

(F) the aggregate number of shares of Common Stock issuable upon the conversion in full of all shares of Series 1 Preferred Stock issuable upon the exercise in full of each Company Warrant which (1) is exercisable for shares of Series 1 Preferred Stock (2) remains outstanding and unexercised as of immediately prior to the Effective Time and (3) has a per share exercise price that is less than \$3.00.

(G) the aggregate number of shares of Common Stock issuable upon the conversion in full of all Shares of Series 2 Preferred Stock issuable upon the exercise in full of each Company Warrant which (1) is exercisable for shares of Series 2 Preferred Stock (2) remains outstanding and unexercised as of immediately prior to the Effective Time and (3) has a per share exercise price that is less than \$3.00.

(vi) "Common Stock Exchange Amount" shall mean an amount equal to the quotient obtained by dividing (A) the Aggregate Residual Amount, by (B) the Fully Diluted Company Share Amount.

(vii) "Series 1 Preferred Stock Exchange Amount" shall mean an amount equal to the sum of (A) the Series 1 Preferred Stock Liquidation Preference Amount, and (B) Common Stock Exchange Amount.

(viii) "Series 1 Preferred Stock Liquidation Preference Amount" shall mean \$2.592.

(ix) "Series 2 Preferred Stock Exchange Amount" shall mean an amount equal to the sum of (A) the Series 2 Preferred Stock Liquidation Preference Amount, and (B) Common Stock Exchange Amount.

(x) "Series 2 Preferred Stock Liquidation Preference Amount" shall mean \$1.80.

(c) Any and all unpaid dividends (accrued but unpaid, declared but unpaid or otherwise) on the Shares immediately prior to the Effective Time shall be canceled at the Effective Time. All the Shares held in the treasury of the Company as of immediately prior to the Effective Time shall be canceled and no consideration of any kind shall be paid, payable or otherwise delivered in exchange therefor under this Agreement as a result of or in connection with the Merger.

(d) Upon consummation of the Merger, certificates that immediately prior to the Effective Time represented outstanding Shares (the "Certificates") shall cease to represent

any rights with respect thereto, other than the right to receive the portion of the Merger Consideration payable hereunder with respect to such Shares.

1.6 Treatment of Options and Certain Warrants.

(a) **Treatment of Company Options.** Subject to any applicable backup or other withholding requirements, at the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each option to acquire shares of the Company's Common Stock ("Company Option") which remains outstanding and unexercised immediately prior to the Effective Time shall be converted into and become the right to receive:

(i) an amount in cash, if any, equal to the Common Stock Exchange Amount, plus an amount, if any, payable in respect of each share of Common Stock pursuant to the terms of Section 1.7; plus

(ii) an amount in cash, if any, as is payable with respect to a positive working capital adjustment, if any; plus

(iii) an amount in cash, if any, as is payable with respect to any remaining Indemnification Escrow Amount in accordance with certain terms agreed-upon by the parties and the Indemnification Escrow Agreement; plus

(iv) an amount in cash as is payable with respect thereto as Earnout Consideration, if any, pursuant to and in accordance with the terms of Section 1.13 hereof; plus

(v) an amount in cash, if any, as is payable with respect to any remaining Expense Escrow Amount and the Representative Expense Escrow Agreement; less

(vi) the exercise price per share of such Company Option (it being understood and hereby agreed that no cash amounts shall be paid in respect of any such Company Option unless and until the aggregate cash amount otherwise payable in respect of such Company Option pursuant to the preceding clauses (i) – (v) of this Section 1.6(a), inclusive, exceeds the aggregate exercise price of such Company Option).

(b) **Treatment of Company Warrants.**

(i) Subject to any applicable backup or other withholding requirements, at the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each warrant to acquire shares of Common Stock, Series 2 Preferred Stock or Series 1 Preferred Stock ("Company Warrant") which is exercisable for shares of Series 1 Preferred Stock that remains outstanding and unexercised immediately prior to the Effective Time shall be converted into and become the right to receive:

(A) an amount in cash equal to the Series 1 Preferred Stock Exchange Amount, plus an amount, if any, payable in respect of each share of Series 1 Preferred Stock pursuant to the terms of Section 1.7 plus

(B) an amount in cash, if any, as is payable with respect to a positive working capital adjustment, if any; plus

(C) an amount in cash, if any, as is payable with respect to any remaining Indemnification Escrow Amount in accordance with certain terms agreed-upon by the parties and the Indemnification Escrow Agreement; plus

(D) an amount in cash and (if applicable) shares of Parent Common Stock, if any, as is payable and/or issuable with respect to the Earnout Consideration pursuant to and in accordance with the terms of Section 1.13; plus

(E) an amount in cash, if any, as is payable with respect to any remaining Expense Escrow Amount and the Representative Expense Escrow Agreement; less

(F) the exercise price per share of such Company Warrant (it being understood and hereby agreed that no amounts shall be paid in respect of any such Company Warrant unless and until the aggregate amount otherwise payable in respect of such Company Warrant (with shares of Parent Common Stock, if applicable, valued at \$11.80 for this purpose) pursuant to the preceding clauses (A) – (E) of this Section 1.6(b)(i), inclusive, exceeds the aggregate exercise price of such Company Warrant).

(ii) Subject to any applicable backup or other withholding requirements, at the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each Company Warrant which is exercisable for shares of Series 2 Preferred Stock that remains outstanding and unexercised immediately prior to the Effective Time shall be converted into and become the right to receive:

(A) an amount in cash equal to the Series 2 Preferred Stock Exchange Amount, plus an amount, if any, payable in respect of each share of Series 2 Preferred Stock pursuant to the terms of Section 1.7; plus

(B) an amount in cash, if any, as is payable with respect to a positive working capital adjustment, if any; plus

(C) an amount in cash, if any, as is payable with respect to any remaining Indemnification Escrow Amount in accordance with certain terms agreed-upon by the parties and the Indemnification Escrow Agreement; plus

(D) an amount in cash and (if applicable) shares of Parent Common Stock, if any, as is payable and/or issuable with respect to the Earnout

Consideration pursuant to and in accordance with the terms of Section 1.13; plus

(E) an amount in cash, if any, as is payable with respect to any remaining Expense Escrow Amount and the Representative Expense Escrow Agreement; less

(F) the exercise price per share of such Company Warrant (it being understood and hereby agreed that no amounts shall be paid in respect of any such Company Warrant unless and until the aggregate amount otherwise payable in respect of such Company Warrant (with shares of Parent Common Stock, if applicable, valued at \$11.80 for this purpose) pursuant to the preceding clauses (A) – (E) of this Section 1.6(b)(ii), inclusive, exceeds the aggregate exercise price of such Company Warrant).

(iii) Subject to any applicable backup or other withholding requirements, at the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each Company Warrant which is exercisable for shares of Common Stock and that remains outstanding and unexercised immediately prior to the Effective Time shall be converted into and become the right to receive:

(A) an amount in cash equal to the Common Stock Exchange Amount, plus an amount, if any, payable in respect of each share of Common Stock pursuant to the terms of Section 1.7; plus

(B) an amount in cash, if any, as is payable with respect to a positive working capital adjustment, if any; plus

(C) an amount in cash, if any, as is payable with respect to any remaining Indemnification Escrow Amount in accordance with certain terms agreed-upon by the parties and the Indemnification Escrow Agreement; plus

(D) an amount in cash, if any, as is payable with respect to the Earnout Consideration pursuant to and in accordance with the terms of Section 1.13 hereof; plus

(E) an amount in cash, if any, as is payable with respect to any remaining Expense Escrow Amount and the Representative Expense Escrow Agreement; less

(F) the exercise price per share of such Company Warrant (it being understood and hereby agreed that no cash amounts shall be paid in respect of any such Company Warrant unless and until the aggregate cash amount otherwise payable in respect of such Company Warrant pursuant to the preceding clauses (A) – (E) of this Section 1.6(b)(iii), inclusive, exceeds the aggregate exercise price of such Company Warrant).

(c) If not exercised prior to the Effective Time, all Company Options that are entitled to payment and all Company Warrants that are entitled to payment shall be cancelled with no right to payment other than such payment rights set forth in accordance with this Section 1.6, and shall have no further rights other than such payment right from and after the Effective Time; it being expressly understood that there may be certain Company Options and Company Warrants that will not be entitled to the payment of Merger Consideration pursuant to this Section 1.6 as a result of the amount of the exercise price applicable thereto. Any other options or warrants to acquire shares of the Company's capital stock shall be cancelled with no right to payment therefor and shall have no further rights from and after the Effective Time.

1.7 Initial Merger Consideration True-Up Adjustment.

(a) As promptly as practicable following the Final Determination Date under Section 1.13 hereof, Parent and the Representative shall recalculate (i) the Series 2 Preferred Stock Exchange Amount, (ii) the Series 1 Preferred Stock Exchange Amount, and (iii) the Common Stock Exchange Amount, in each case based upon the following revised definitions:

(i) "Aggregate Exercise Price Amount" shall mean the aggregate dollar amount payable to the Company as the purchase price for the exercise of (A) each Company Option outstanding as of immediately prior to the Effective Time with a per share exercise price that is less than the per share value of the consideration paid or payable in respect of each Company Option pursuant to Section 1.6(a) hereof (without giving effect to Section 1.6(a)(i)), and (B) each Company Warrant outstanding as of immediately prior to the Effective Time with a per share exercise price that is less than the per share value of the consideration paid or payable in respect of each Company Warrant pursuant to Section 1.6(b) hereof (without giving effect to Sections 1.6(b)(i)(B), 1.6(b)(ii)(B), and 1.6(b)(iii)(A)).

(ii) "Fully Diluted Company Share Amount" shall mean the sum (without duplication) of the following:

(A) the aggregate number of shares of Common Stock outstanding as of immediately prior to the Effective Time;

(B) the aggregate number of shares of Common Stock issuable upon the conversion in full of any and all shares of Series 1 Preferred Stock outstanding as of immediately prior to the Effective Time;

(C) the aggregate number of shares of Common Stock issuable upon the conversion in full of any and all shares of Series 2 Preferred Stock outstanding as of immediately prior to the Effective Time;

(D) the aggregate number of shares of Common Stock issuable upon the exercise in full of each Company Option outstanding as of the immediately prior to the Effective Time with a per share exercise price that is less than the per share value of the consideration paid or payable in respect of each Company Option pursuant to Section 1.6(a) hereof (without giving effect to Section 1.6(a)(i));

(E) the aggregate number of shares of Common Stock issuable upon the exercise in full each Company Warrant which (1) was exercisable for shares of Common Stock, (2) remained outstanding and unexercised as of immediately prior to the Effective Time, and (3) had a per share exercise price that is less than the per share value of the consideration paid or payable in respect of each such Company Warrant pursuant to Section 1.6(b) hereof (without giving effect to Section 1.6(b)(iii)(A)); and

(F) the aggregate number of shares of Common Stock issuable upon the conversion in full of all shares of Series 1 Preferred Stock or Series 2 Preferred Stock issuable upon the exercise in full of each Company Warrant which (1) was exercisable for shares of Series 1 Preferred Stock or Series 2 Preferred Stock, (2) remained outstanding and unexercised as of immediately prior to the Effective Time, and (3) has a per share exercise price that is less than the per share value of the consideration paid or payable in respect of each such Company Warrant pursuant to Section 1.6(b) hereof (without giving effect to Section 1.6(b)(i)(B) and 1.6(b)(ii)(B)).

(b) In the event that the calculation contemplated by Section 1.7(a) results in a Series 2 Preferred Stock Exchange Amount, Series 1 Preferred Stock Exchange Amount or Common Stock Exchange Amount that exceeds the value of such amounts as calculated pursuant to the terms of Section 1.5(a)(iii)(B), then promptly following the Final Determination Date, and in any event within five (5) business days of the Final Determination Date, the Representative and Parent shall update the Spreadsheet to reflect as much, and Parent shall pay (in the case of the holders of Company Options as of immediately prior to the Effective Time) or shall use its commercially reasonable efforts to cause the Exchange Agent to pay from the Exchange Fund (in the case of holders of Company Warrants as of immediately prior to the Effective Time), to each Securityholder that has properly completed a Letter of Transmittal (if applicable), such Securityholder's allocable portion of the additional Series 2 Preferred Stock Exchange Amount, Series 1 Preferred Stock Exchange Amount and Common Stock Exchange Amount in accordance with the allocation set forth in the Spreadsheet, as updated in the manner contemplated by this Section 1.7. If at such time there are insufficient funds in the Exchange Fund to satisfy such payments, then Parent shall deposit (by wire transfer of immediately available funds) with the Exchange Agent sufficient funds to make such payments, provided that the deposit thereof would not violate certain terms of the Closing mechanics.

(c) Following any payment contemplated by Section 1.7(b), Parent and the Representative shall in good faith adjust the Spreadsheet to take into account any adjustments to the remaining Merger Consideration for each Securityholder by virtue of the adjustments contemplated by this Section 1.7. For example, if an estimate is made under this Section 1.7 with respect to any amount that may be payable from the Indemnification Escrow Amount, it may be necessary to adjust the Spreadsheet to provide that holders of Company Warrants or Company Options are entitled to a greater amount of the Indemnification Escrow Amount, if distributed, than initially indicated on the Spreadsheet.

1.8 Dissenters Shares. Notwithstanding anything contained herein to the contrary, to the extent that appraisal rights are available under the Act, any Shares that are issued and outstanding immediately prior to the Effective Time and that have not been voted to approve this Agreement and the Merger Agreement and with respect to which appraisal rights have been properly and timely perfected in accordance with the Act (the "Dissenting Shares") shall not be converted into the right to receive the Merger Consideration at or after the Effective Time. If a holder of Dissenting Shares effectively withdraws or loses his, her or its right to appraisal and payment under the Act, then, as of the Effective Time or the occurrence of such event, whichever later occurs, such holder's Dissenting Shares shall cease to be Dissenting Shares and shall be converted into and represent the right to receive, when and as payable, the portion of the Merger Consideration payable with respect to such Shares hereunder upon surrender of the Certificates representing such Dissenting Shares in accordance with Section 1.5 hereof. The Company shall give Parent prompt notice of any demand received by the Company for appraisal of Shares. Except with the prior written consent of Parent or as may otherwise be required under applicable Law, the Company shall not make any payment with respect to, or settle or offer to settle, any such demands.

1.9 [Intentionally Omitted].

1.10 [Intentionally Omitted].

1.11 [Intentionally Omitted].

1.12 [Intentionally Omitted].

1.13 Earnout.

(a) Earnout Consideration. If the Surviving Company achieves certain revenue targets as agreed upon by the parties (the "Earnout Calculation Schedule") at any time during the period starting on the earlier of the Closing Date or July 1, 2010 through January 1, 2012 (the "Earnout Period"), then as soon as reasonably practicable following the Final Determination thereof (but in no event prior to July 3, 2011) as provided in this Section 1.13, for the applicable Earnout Period, Parent shall deposit (by wire transfer of immediately available funds) with the Exchange Agent an amount equal to the aggregate amount of the Securityholder's allocable portion of the amount of cash set forth on the Earnout Calculation Schedule. The Exchange Agent shall distribute such amount of cash to those Securityholders that have properly completed a Letter of Transmittal, if applicable, in accordance with the allocations set forth in the Spreadsheet. Parent shall also issue (or cause to be issued and distributed by the Exchange Agent), Parent Common Stock to those Securityholders entitled to the same as set forth on the Spreadsheet in accordance with the allocations set forth in the Spreadsheet (based on each Securityholder's Stock Election Percentage and Cash Election Percentage, if applicable, and calculated in accordance with Section 1.13(b)(iv) (such cash and Parent Common Stock collectively, the "Earnout Consideration").

(b) Election.

(i) Each holder of a certificate that immediately prior to the Effective Time represented outstanding shares of Series 2 Preferred Stock or Series 1 Preferred

Stock and each holder of a Company Warrant exercisable for shares of Series 1 Preferred Stock or Series 2 Preferred Stock (each, a "Preferred Stock Warrant") shall be entitled to make, or be deemed to have made, an election with respect to the Earnout Consideration in accordance with the provisions of this Section 1.13(b). Each holder of shares of Common Stock, and each holder of Company Options and Company Warrants exercisable for Common Stock (each, a "Common Stock Warrant") shall only be entitled to receive cash with respect to any Earnout Consideration payable hereunder in respect of such shares of Common Stock and such Company Options and Common Stock Warrants.

(ii) [Intentionally Omitted]

(iii) Each such holder of shares of Series 2 Preferred Stock and Series 1 Preferred Stock and each holder of a Preferred Stock Warrant may specify in a request made in accordance with the provisions of this Section 1.13(b) (an "Election") (A) the percentage of such holder's Earnout Consideration which such holder desires to receive in Parent Common Stock ("Stock Election Percentage") and (B) the percentage of such holder's Earnout Consideration which such holder desires to receive in cash ("Cash Election Percentage").

(iv) In the event that a holder of shares of Series 2 Preferred Stock or Series 1 Preferred Stock or a holder of Preferred Stock Warrants makes a valid Stock Election, then any Earnout Consideration that would have been payable in cash in respect of such shares of Series 2 Preferred Stock and Series 1 Preferred Stock and such Preferred Stock Warrants shall, in lieu thereof, be paid in a number of shares of Parent Common Stock equal to the quotient obtained by dividing (A) the Earnout Consideration that would have been payable in cash in respect of such shares of Series 2 Preferred Stock and Series 1 Preferred Stock and such Preferred Stock Warrants but for such Stock Election, by (B) \$11.80 (the "Parent Common Stock Value").

(c) Notwithstanding any other provision of this Agreement, no fractional shares of Parent Common Stock will be issued as Earnout Consideration pursuant to this Agreement and any holder of shares of Series 2 Preferred Stock or Series 1 Preferred Stock or any holder of a Preferred Stock Warrant otherwise entitled to receive a fractional share of Parent Common Stock shall be entitled to receive in lieu thereof an amount in cash (without interest) determined by multiplying such fraction (rounded to the nearest one-hundredth of a share) by the Parent Common Stock Value. For purposes of determining any cash payable in lieu of fractional shares of Parent Common Stock, all Earnout Consideration payable to each such holder at any single payment date of any Earnout Consideration in respect of all shares of Series 2 Preferred Stock and Series 1 Preferred Stock and each Preferred Stock Warrant held by such holder as of immediately prior to such payment date shall be aggregated.

(d) [Intentionally Omitted].

(e) [Intentionally Omitted].

(f) [Intentionally Omitted].

(g) [Intentionally Omitted].

(h) Tax Reporting. The Securityholders and Parent shall to the extent permitted by applicable Law treat and report for applicable Tax and financial reporting purposes any Earnout Consideration as payment of additional Merger Consideration, except that a portion of the Earnout Consideration shall constitute interest as determined using the appropriate applicable federal rate (as defined in Section 1274(d) of the Code and the Treasury Regulations thereunder), and shall be treated and reported by Securityholders and Parent as interest for such purposes.

1.14 Organizational Documents of the Surviving Company. The Certificate of Incorporation of the Surviving Company shall be as set forth in Exhibit B.

1.15 Directors and Officers of the Surviving Company. The directors and officers set forth on Exhibit C shall be the directors and officers of the Surviving Company, effective as of the Effective Time, until their successors shall have been duly elected and qualified or until their


1.16 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to its choice of law provisions.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement of Merger as of the date first written above.

OSCAR ACQUISITION SUB, INC.

By: 
Ken Hannah
President

By: 
Bradley Kohn
Secretary

SOLAICX

By: _____
David Ranhoff
President and Chief Executive Officer

By: _____
Guy Anthony
Secretary

IN WITNESS WHEREOF, the parties have executed this Agreement of Merger as of the date first written above.

OSCAR ACQUISITION SUB, INC.

By: _____
Ken Hannah
President

By: _____
Bradley Kohn
Secretary

SOLAICX

By: David A. Ranhoff
David Ranhoff
President and Chief Executive Officer

By: _____
Guy Anthony
Secretary

IN WITNESS WHEREOF, the parties have executed this Agreement of Merger as of the date first written above.

OSCAR ACQUISITION SUB, INC.

By: _____
Ken Hannah
President

By: _____
Bradley Kohn
Secretary

SOLAICX

By: _____
David Ranhoff
President and Chief Executive Officer

By: _____
Guy Anthony
Secretary

Exhibit A

DEFINITIONS

Annual Financial Statements: the audited balance sheet of the Company as of December 31, 2007, and the unaudited balance sheets of the Company as of December 31, 2008 and 2009 and the related audited or unaudited, as the case may be, statements of income, retained earnings and cash flows for the periods then ended, together with notes and schedules thereto.

Code: The Internal Revenue Code.

Company Options: The options to acquire shares of the Company's Common Stock outstanding as of the date hereof.

Company Warrants: The warrants to acquire shares of Common Stock, Series 2 Preferred Stock or Series 1 Preferred Stock outstanding as of the date hereof.

Exchange Agent: The exchange agent selected by Parent with the Company's prior approval, which shall not be unreasonably withheld or delayed.

Exchange Fund: Cash necessary to pay the Initial Merger Consideration to be paid (excluding amounts payable under Section 1.6(a) for Company Options) in connection with the Merger.

Expense Escrow Fund: A source of reimbursement for any actual out-of-pocket costs and expenses incurred by the Representative in connection with the performance of its duties and responsibilities.

Expense Escrow Agreement: The escrow agreement between Representative and Escrow Agent.

Final Determination: The final determination of the Earnout Consideration pursuant to Section 1.13.

Final Determination Date: The date of the Final Determination.

Indebtedness: Without duplication (i) all indebtedness for borrowed money, whether current or funded, secured or unsecured, including, without limitation, all indebtedness outstanding under that certain Promissory Note, issued September 19, 2008 by the Company for the benefit of the State of Oregon, provided that (x) the principal amount of loans to the Company from Securityholders during the period from April 4, 2010 through the Closing Date to the extent the same are included in the term New Investment Adjustment Amount and/or any Post-Execution Investment Amount, shall not be included (but any interest thereon shall be included), and (y) and the long term portion of any capital leases shall not be included; (ii) notes payable and drafts accepted representing extensions of credit, whether or not representing obligations for borrowed money (for the avoidance of doubt, excluding any trade accounts payable and checks payable to the Company, which have been endorsed by the Company for collection in the ordinary course of business); (iii) guaranties securing indebtedness for borrowed money; (iv) all amounts drawn under outstanding letters of credit; (v) all costs and obligations incurred in connection with a change of control of the Company (including payments to be made under the Management Carveout Plan at the Effective Time in excess of \$2,442,000), but excluding (A) the Transaction Payroll Taxes, (B) all Transaction Expenses, and (C) payments to be made under the Management Carveout Plan at the Effective Time of up to \$2,442,000); (vi) all interest rate swap, derivative and similar arrangements; (vii) any amounts paid or payable for the Tail Policy in excess of \$60,000; (viii) all Losses incurred by the Company prior to the Effective Time or

Exhibit A

agreed by the Company prior to the Effective Time to be incurred at any time (whether before or after the Effective Time) in connection with any Securityholder Claims; and (ix) all interest (unless irrevocably waived by the holders of such Indebtedness), any premiums payable or any other costs or charges (including any prepayment penalties) on any instruments or obligations described in clauses (i) through (viii) hereof, all as the same may be payable upon the complete and final payoff thereof, regardless of whether such payoff occurs prior to, simultaneous with or following the Closing.

Indemnification Escrow Account: The account in which the Indemnification Escrow Amount shall be held pursuant to the Indemnification Escrow Agreement.

Indemnification Escrow Amount: \$9,900,000.

Indemnification Escrow Agreement: The indemnification escrow agreement to be entered into by certain of the parties and the U.S. Bank National Association.

Information Statement: An information statement prepared by the Company.

Initial Merger Consideration: The Merger Consideration, as adjusted for purposes of Closing based on certain estimates made by the parties.

Law: Any applicable statute, law, treaty, convention, ordinance, decree, order, judgment, injunction, rule, directive, or regulation of any government.

Letter of Transmittal: A letter of transmittal and instructions for use in effecting a surrender of the Certificates, if applicable, in exchange for its respective portion of the Merger Consideration.

Losses: Losses, judgments, orders, damages, liabilities, expenses or costs.

Management Carveout Plan: The Company's management carveout plan.

Net Working Capital: As of any date, the excess of the current assets of the Company (excluding any deferred Tax assets of the Company) over the current liabilities of the Company, including any payroll or employment taxes incurred by the Company on or prior to the Closing Date (the "Transaction Payroll Taxes") and excluding (i) any deferred Tax liabilities of the Company, (ii) the current portion of any Indebtedness of the Company, and (iii) any Transaction Expenses), in each case as reflected on the balance sheet of the Company as of such date and as calculated in accordance GAAP applied in a manner consistent with accounting principles, policies, methodologies, practices and procedures applied in the preparation of the Annual Financial Statements and, where applicable, certain agreed-upon accounting principles, policies, methodologies, practices and procedures set.

New Investment Adjustment Amount: The face amount of all amounts invested into the Company by the Securityholders (whether in the form of equity, debt or a combination of the foregoing) on or after April 4, 2010 and prior to the Closing Date, if and only if any such investments have been converted into equity prior to the Closing, plus \$500,000.

Parent Common Stock: 300,000,000 shares of the common stock of Parent, par value \$.01 per share.

Parent Indemnified Person: The Parent, the Surviving Company, the Company and any of their affiliates (to the extent the same are affiliates from and after the Effective Time) and the shareholders, directors, officers, employees, successors, assigns, representatives and agents of each of them in their capacities as such at any time after the Effective Time.

Exhibit A

Person: An individual, a partnership, a joint venture, a corporation, a limited liability company, a trust, an association, an unincorporated organization, a government and any other entity.

Positive Net Working Capital Adjustment: (x) Less an amount in cash equal to the amount, if any, by which the Net Working Capital as of the Closing is less than the Target Net Working Capital, or (y) plus an amount in cash equal to the amount, if any, by which the Net Working Capital as of the Closing is greater than the Target Net Working Capital.

Post-Execution Investment Amount: The face amount (i.e., not including any accrued interest thereon) of all amounts invested into the Company by the Securityholders (in the form of debt) on or after the date hereof and prior to the Closing Date, if each such investments has been appropriately made and has not been converted into equity of the Company prior to the Closing.

Representative: Shareholder Representative Services LLC.

Representative Expense Escrow Agreement: Escrow agreement between Representative and Escrow Agent.

Securityholders: Collectively the Shareholders, holders of Company Warrants and holders of Company Options.

Securityholder Claims: Any claims (including claims against any of Parent, the Company, the Surviving Company or their respective directors or officers) made, whether before or after the date hereof of before or after the Effective Time, by current (i.e., those as of the date of the Merger Agreement or those who become such between the date of the Merger Agreement and the Closing Date) or former direct or indirect holders of equity or debt securities of the Company or by any participant in the Management Carveout Plan of any kind or nature whatsoever (including, without limitation, all of the Securityholders), in their capacity as, or related to, their status as a current or former direct or indirect holder of equity or debt securities or participant in the Management Carveout Plan, or as an assignee or based upon any relationship or arrangements with any of the foregoing, and whether any such claim arises under a contract, instrument, agreement, understanding or otherwise (other than claims against Parent or Acquisition Subsidiary for breach of the Merger Agreement or any of the other agreements executed and delivered by Parent in connection herewith) and whether arising under law or under equity (other than claims for which the facts or circumstances giving rise to such claim first occur following Closing); provided however, Securityholder Claims do not include any claim for appraisal or dissenters' rights with respect to the shares of capital stock under California law or any other applicable Law.

Share: 55,000,000 shares of Company Common Stock, of which 481,225 shares are issued and outstanding, 2,000,000 shares of Series 1 Preferred Stock, of which 1,711,572 shares are issued and outstanding and 43,000,000 shares of Series 2 Preferred Stock, of which 23,399,198 shares are issued and outstanding.

Shareholder: A holder of Shares of the Company as of immediately prior to the Effective Time.

Spreadsheet: A spreadsheet with certain agreed-upon information relating to Closing.

Stock Election: A valid election to receive Parent Common Stock.

Tail Policy: A six-year tail policy for the Company's officers' and directors' liability insurance with an aggregate premium not in excess of Sixty Thousand Dollars (\$60,000) in a form mutually acceptable to the Company and Parent, which shall provide such directors and officers

Exhibit A

with coverage for six years following the Effective Time of not less than the existing coverage under, and have other terms not materially less favorable to, the insured persons than the directors' and officers' liability insurance coverage in effect for the Company on February 1, 2010.

Target Net Working Capital: Zero.

Tax: Any one of: taxes, charges, fees, levies, or other like assessments, including without limitation, all federal, possession, state, city, county and non-U.S. (or governmental unit, agency, or political subdivision of any of the foregoing) income, profits, employment (including Social Security, unemployment insurance and employee income tax withholding), franchise, gross receipts, sales, use, transfer, stamp, occupation, property, any governmental rights to unclaimed property, capital, severance, premium, windfall profits, customs, duties, ad valorem, value added and excise taxes; PBGC premiums and any other governmental charges of the same or similar nature; including any interest, penalty, or addition thereto, whether disputed or not and including any obligations to indemnify or otherwise assume or succeed to the Tax liability of any other Person (for example, by reason of transferee liability or application of Treasury regulation 1.1502-6).

Transactions Expenses: All costs and expenses incurred or to be incurred by the Company in connection with or as a result of (i) the preparation, negotiation and execution of this Agreement, the Indemnification Escrow Agreement, the Expense Escrow Agreement and/or any other agreements contemplated hereby, and/or (ii) the consummation of the transactions contemplated hereby (including, without limitation, the Merger), and in any case, including, but not limited to, (A) all accounting, legal, investment banking fees and commercial banking fees and expenses related thereto (but excluding any expenses incurred by the Company in connection with audits of the Company's financial statements undertaken at the written request of the Parent), and (B) all change of control or other payments (including bonus acceleration payments) paid to directors, officers and employees of the Company as a result of the consummation of the Merger.

Exhibit B

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
SOLAICX**

ARTICLE I

The name of this corporation is Solaicx.

ARTICLE II

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

ARTICLE III

The name in the State of California of this corporation's initial agent for service of process is Corporation Service Company which will do business in California as CSC—Lawyers Incorporating Service.

ARTICLE IV

This corporation is authorized to issue only one class of shares of stock to be designated as common stock ("Common Stock") with a par value of \$0.01 per share. The total number of shares of Common Stock which this corporation is authorized to issue is One Thousand (1,000).

ARTICLE V

The liability of the directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

This corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through bylaw provisions, agreements with the agents, vote of shareholders or disinterested directors, or otherwise in excess of indemnification otherwise permitted by Section 317 of the California Corporations Code, subject only to the applicable limits set forth in Section 204 of the California Corporations Code with respect to actions for breach of duty to this corporation and its shareholders. If, after the effective date of this Article, California law is amended in a manner which permits a company to limit the monetary or other liability of its directors or to authorize indemnification of, or advancement of such defense expenses to, its directors or other persons, in any such case to a greater extent than is permitted on such effective date, the references in this Article to "California law" shall to that extent be deemed to refer to California law as so amended.

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

Exhibit C

Officers

Ken Hannah – President

Kent Bruenning – Chief Financial Officer/Treasurer

Bradley Kohn – Secretary

Directors

Ken Hannah

Brian Wuebbels

Bradley Kohn

**OFFICERS' CERTIFICATE
OF
SOLAICX**

David Ranhoff, the President and Chief Executive Officer, and Guy Anthony, the Secretary, of Solaicx, a corporation duly incorporated and existing under the laws of the State of California (the "Company"), do hereby certify that:

1. They are the duly elected, acting and qualified President and Chief Executive Officer and Secretary, respectively, of the Company.

2. The authorized capital stock of the Company consists of: (i) 55,000,000 shares of Common Stock, of which, as of the date of this Agreement, 481,225 shares were issued and outstanding and no shares were held in the treasury of the Company, (ii) 2,000,000 shares of Series 1 Preferred Stock, of which, as of the date of this Agreement, 1,711,572 shares were issued and outstanding and no shares were held in the treasury of the Company, and (iii) 43,000,000 shares of Series 2 Preferred Stock, of which, as of the date of this Agreement, 23,399,198 shares were issued and outstanding and no shares were held in the treasury of the Company. Each of these outstanding shares were entitled to vote on the merger of Oscar Acquisition Sub., Inc., a California corporation, with and into the Company, as described in the Agreement of Merger ("Merger").

3. The principal terms of the Agreement of Merger were duly approved by the board of directors and by the shareholders of the Company by a vote that equaled or exceeded the vote required.

4. The affirmative vote of the shareholders of the Company holding (i) a majority of the voting power of the outstanding shares of Common Stock, (ii) a majority of the voting power of the outstanding shares of Series 1 Preferred Stock and Series 2 Preferred Stock, voting together as a class, and (iii) a majority of the voting power of the Common Stock, Series 1 Preferred Stock and Series 2 Preferred Stock, voting together on an as-converted basis, was required to approve the Merger.

Each of the undersigned further declares under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of their own knowledge.

Executed on this 1st day of July, 2010.



David Ranhoff
President and Chief Executive Officer

Guy Anthony
Secretary

**OFFICERS' CERTIFICATE
OF
SOLAICX**

David Ranhoff, the President and Chief Executive Officer, and Guy Anthony, the Secretary, of Solaicx, a corporation duly incorporated and existing under the laws of the State of California (the "Company"), do hereby certify that:

1. They are the duly elected, acting and qualified President and Chief Executive Officer and Secretary, respectively, of the Company.

2. The authorized capital stock of the Company consists of: (i) 55,000,000 shares of Common Stock, of which, as of the date of this Agreement, 481,225 shares were issued and outstanding and no shares were held in the treasury of the Company, (ii) 2,000,000 shares of Series 1 Preferred Stock, of which, as of the date of this Agreement, 1,711,572 shares were issued and outstanding and no shares were held in the treasury of the Company, and (iii) 43,000,000 shares of Series 2 Preferred Stock, of which, as of the date of this Agreement, 23,399,198 shares were issued and outstanding and no shares were held in the treasury of the Company. Each of these outstanding shares were entitled to vote on the merger of Oscar Acquisition Sub., Inc., a California corporation, with and into the Company, as described in the Agreement of Merger ("Merger").

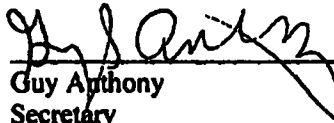
3. The principal terms of the Agreement of Merger were duly approved by the board of directors and by the shareholders of the Company by a vote that equaled or exceeded the vote required.

4. The affirmative vote of the shareholders of the Company holding (i) a majority of the voting power of the outstanding shares of Common Stock, (ii) a majority of the voting power of the outstanding shares of Series 1 Preferred Stock and Series 2 Preferred Stock, voting together as a class, and (iii) a majority of the voting power of the Common Stock, Series 1 Preferred Stock and Series 2 Preferred Stock, voting together on an as-converted basis, was required to approve the Merger.

Each of the undersigned further declares under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of their own knowledge.

Executed on this 1st day of July, 2010.

David Ranhoff
President and Chief Executive Officer



Guy Anthony
Secretary

**OFFICERS' CERTIFICATE
OF
OSCAR ACQUISITION SUB, INC.**

Ken Hannah, the President, and Bradley Kohn, the Secretary, of Oscar Acquisition Sub, Inc., a corporation duly incorporated and existing under the laws of the State of California (the "Corporation"), do hereby certify that:

1. They are the duly elected, acting and qualified President and Secretary, respectively, of the Corporation.
2. The principal terms of the Agreement of Merger were duly approved by the board of directors and by the sole shareholder of the Corporation by a vote that equaled or exceeded the vote required.
3. The shareholder approval was by the holders of 100% of the outstanding shares of the Corporation.
4. There is only one class of shares and the number of shares outstanding entitled to vote on the merger is 1,000.
5. No vote of the shareholders of the sole shareholder of the Corporation was required.

Each of the undersigned further declares under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of their own knowledge.

Executed on this 1st day of July, 2010.



Ken Hannah
President



Bradley Kohn
Secretary



I hereby certify that the foregoing
transcript of 26 page(s)
is a full, true and correct copy of the
original record in the custody of the
California Secretary of State's office.

DEC 11 2015 *Pg*

Date: _____

Alex Padilla

ALEX PADILLA, Secretary of State

PATENT

REEL: 037415 FRAME: 0917



**State of California
Secretary of State**

**FILING OFFICE
ADMINISTRATIVE ACTION STATEMENT**

INTERNAL USE ONLY

A0757385

**FILED
Secretary of State
State of California**

JUN 25 2014

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1. Identification of the Record to which this FILING OFFICE STATEMENT relates.

1a. DOCUMENT # (IF ANY)
A0671704

1b. DATE RECORD FILED
01/16/2008

1c. FILE # TO WHICH THE RECORD RELATES
C2378546

2. Describe the inaccuracy or mistake on the part of the filing office.

Data entry error.

3. Describe filing office administrative action taken.

Corrected the document type from Certificate of Amendment.

FILING CLERK SC



I hereby certify that the foregoing transcript of 1 page(s) is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.

DEC 11 2015 *Rz*

Date: _____

Alex Padilla

ALEX PADILLA, Secretary of State

PATENT

RECORDED: 01/04/2016

REEL: 037415 FRAME: 0919