

**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION OF**  
**FLITWAYS TECHNOLOGY INC.**

Flitways Technology Inc., a corporation organized and existing under the laws of the State of Delaware (the “**Corporation**”), certifies that:

A. The name of the Corporation is Flitways Technology Inc.. The Corporation’s original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on October 29, 2014.

B. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and has been duly approved by the written consent of the stockholders of the Corporation in accordance with Section 228 of the General Corporation Law of the State of Delaware.

C. The text of the Certificate of Incorporation is amended and restated to read as set forth in EXHIBIT A attached hereto.

IN WITNESS WHEREOF, Flitways Technology Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by Tobi Mac, a duly authorized officer of the Corporation, on \_\_\_\_\_.

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Name: Tobi Mac  
Title: CEO

## **EXHIBIT A**

### ARTICLE I

The name of the Corporation is Flitways Technology Inc. (the “**Corporation**”).

### ARTICLE I

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

### ARTICLE III

The address of the Corporation’s registered office in the State of Delaware is 1521 Concord #303, Wilmington, New Castle County, DE 19803. The name of the registered agent at such address is A Registered Agent, Inc..

### ARTICLE IV

The total number of shares of stock that the Corporation shall have authority to issue is 15,000,000, consisting of 13,000,000 shares of Common Stock, \$0.00001 par value per share (the “**Common Stock**”), and 2,000,000 shares of Preferred Stock, \$0.00001 par value per share (the “**Preferred Stock**”). The first Series of Preferred Stock shall be designated “**FlashSeed Preferred Stock**” and shall consist of 2,000,000 shares.

The Board (as defined below) is authorized to establish from time to time, by resolution or resolutions, the number of shares to be included in each additional wholly unissued series of Preferred Stock and to fix and alter the rights, preferences, privileges, and restrictions granted to and imposed upon such series of Preferred Stock, and to fix the designation of any such series of Preferred Stock. Subject to compliance with applicable protective voting rights that have been or may be granted to Preferred Stock or any series thereof in any Certificate of Designation or the Corporation’s Certificate of Incorporation (“**Protective Provisions**”), but notwithstanding any other rights of Preferred Stock or any series thereof, the rights, privileges, preferences and restrictions of any such additional series may be subordinated to, *pari passu* with (including, without limitation, inclusion in provisions with respect to liquidation, preferences, redemption and/or approval of matters by vote or written consent), or senior to, any of those of any present or future class or series of Preferred Stock or Common Stock. Subject to compliance with applicable Protective Provisions, the Board is also authorized to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series prior or subsequent to the original issue of shares of that series.

### ARTICLE V

The terms and provisions of the Common Stock and FlashSeed Preferred Stock are as follows:

1. Definitions. For purposes of this ARTICLE V, the following definitions shall apply:

(a) “**Board**” means the Board of Directors of the Corporation.

(b) “**Conversion Price**” means \$0.50 per share for the Flash Preferred (subject to adjustment from time to time as set forth elsewhere herein).

(c) “**Distribution**” means the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation by the Corporation for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, and (iii) repurchase of capital stock of the Corporation in connection with the settlement of disputes with any stockholder.

(d) “**Flash Preferred**” shall mean the FlashSeed Preferred Stock.

(e) “**Liquidation Event**” means any of the following: (i) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions to which the Corporation is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of related transactions in which the holders of the voting securities of the Corporation outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, as a result of shares in the Corporation held by such holders prior to such transaction or series of related transactions, a majority of the total voting power represented by the outstanding voting securities of the Corporation or such other surviving or resulting entity (or if the Corporation or such other surviving or resulting entity is a wholly-owned subsidiary immediately following such acquisition, its parent); (ii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation and its subsidiaries taken as a whole by means of any transaction or series of related transactions, except where such sale, lease or other disposition is to a wholly-owned subsidiary of the Corporation; or (iii) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary. The treatment of any transaction or series of related transactions as a Liquidation Event pursuant to clause (i) or (ii) of the preceding sentence may be waived with respect to any series of Preferred Stock by the consent or vote of a majority of the outstanding shares of such series.

(f) “**Liquidation Preference**” shall mean the Original Issue Price plus any declared and unpaid dividends on such shares.

(g) “**Original Issue Price**” shall mean \$0.50 per share for the Flash Preferred (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(h) “**Recapitalization**” shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event.

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

3. Liquidation Rights

(a) Liquidation Preference. In the event of any Liquidation Event, the holders of the Flash Preferred shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, an amount per share for each share of Flash Preferred held by them equal to the greater of (i) Liquidation Preference for such share of Flash Preferred and (ii) such amount per share as would have been payable had all shares of Flash Preferred been converted into Common Stock pursuant to Section 4 immediately prior to such Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the “**Liquidation Preference Amount**”). If upon a Liquidation Event, the assets of the Corporation legally available for distribution to the holders of the Flash Preferred are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a), then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and *pro rata* among the holders of the Flash Preferred in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a).

(b) Remaining Assets. In the event of any Liquidation Event, after the payment or setting aside for payment to the holders of Flash Preferred of the full Liquidation Preference Amount, the entire remaining assets of the Corporation legally available for distribution shall be distributed *pro rata* to holders of the Common Stock of the Corporation in proportion to the number of shares of Common Stock held by them.

(c) Valuation of Non-Cash Consideration. If any assets of the Corporation distributed to stockholders in connection with any Liquidation Event are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board.

4. Conversion. The holders of the Flash Preferred shall have conversion rights as follows:

(a) Right to Convert. Each share of Flash Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Flash Preferred, into that number of fully-paid, nonassessable shares of Common Stock determined by dividing the Original Issue Price by the Conversion Price. The number of shares of Common Stock into which each share of Flash Preferred may be converted is hereinafter referred to as the “**Conversion Rate**” for such series. Upon any decrease or increase in the Conversion Price for the Flash Preferred, as described in this Section 4, the Conversion Rate shall be appropriately increased or decreased.

(b) Automatic Conversion. Each share of Flash Preferred shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective

Conversion Rate for such share (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the “**Securities Act**”), covering the offer and sale of the Corporation’s Common Stock, or (ii) upon the receipt by the Corporation of a written request or election for such conversion from the holders of a majority of the Flash Preferred then outstanding (voting as a single class and on an as-converted basis), or, if later, the effective date for conversion specified in such requests (each of the events referred to in (i) and (ii) are referred to herein as an “**Automatic Conversion Event**”).

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Flash Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board. For such purpose, all shares of Flash Preferred held by each holder of Flash Preferred shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Flash Preferred shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, such holder shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Flash Preferred or (B) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that such holder elects to convert the same; *provided, however*, that on the date of an Automatic Conversion Event, the outstanding shares of Flash Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided further*, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Flash Preferred are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Flash Preferred shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Flash Preferred shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Flash Preferred, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

(d) Adjustments for Subdivisions or Combinations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise) into a greater number of shares of Common Stock, the Conversion Price of the Flash Preferred in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Price in effect

immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(e) Adjustments for Subdivisions or Combinations of Flash Preferred. In the event the outstanding shares of Flash Preferred shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Flash Preferred, the Original Issue Price of the Flash Preferred in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Flash Preferred shall be combined (by reclassification or otherwise) into a lesser number of shares of Flash Preferred, the Original Issue Price of the Flash Preferred in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(f) Adjustments for Reclassification, Exchange and Substitution. Subject to Section 3 above (“Liquidation Rights”), if the Common Stock issuable upon conversion of the Flash Preferred shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then, in any such event, in lieu of the number of shares of Common Stock which the holders of Flash Preferred would otherwise have been entitled to receive, each holder of such Flash Preferred shall have the right thereafter to convert such shares of Flash Preferred into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of such Flash Preferred immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(g) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Flash Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Flash Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Flash Preferred.

(h) Notices of Record Date. In the event that this Corporation shall propose at any time:

(i) to declare any Distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iii) to voluntarily liquidate or dissolve or to enter into any transaction deemed to be a Liquidation Event;

then, in connection with each such event, this Corporation shall send to the holders of the Flash Preferred at least 10 days' prior written notice of the date on which a record shall be taken for such Distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto and, if applicable, the amount and character of such Distribution) or for determining rights to vote in respect of the matters referred to in (ii) and (iii) above.

(i) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common 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 then outstanding shares of the 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 the Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

## 5. Voting

(a) General. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(b) Flash Preferred. Each holder of Flash Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Flash Preferred held by such holder could be converted as of the record date. The holders of shares of Flash Preferred shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. Holders of Flash Preferred shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Flash Preferred held by each holder could be converted), shall be disregarded.

(c) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held; *provided, however,* that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Certificate of Incorporation or pursuant to the General Corporation Law.

(d) Adjustment in Authorized Common Stock. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the

affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

6. Reissuance of Flash Preferred. In the event that any shares of Flash Preferred shall be converted pursuant to Section 4 or otherwise repurchased by the Corporation, the shares so converted, redeemed or repurchased shall be cancelled and shall not be issuable by this Corporation.

7. Waiver. Any of the rights, powers, preferences and other terms of the Flash Preferred set forth herein may be waived on behalf of all holders of Flash Preferred by the affirmative written consent or vote of the holders of a majority of the shares of Flash Preferred then outstanding.

8. Notices. Any notice required by the provisions of this ARTICLE V to be given to the holders of Preferred Stock shall be deemed given if 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 the Corporation, or given by electronic communication in compliance with the provisions of the Delaware General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

9. Certain Distributions. To the extent that the California Corporations Code is applicable to the Corporation, for purposes of Section 500 of the California Corporations Code, in connection with any repurchase of shares of Common Stock permitted under this Amended and Restated Certificate of Incorporation from employees, officers, directors or consultants of the Company in connection with a termination of employment or services pursuant to agreements or arrangements approved by the Board (in addition to any other consent required under this Amended and Restated Certificate of Incorporation), such repurchase may be made without regard to any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined in Section 500 of the California Corporations Code). Accordingly, for purposes of making any calculation under California Corporations Code Section 500 in connection with such repurchase, the amount of any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined therein) shall be deemed to be zero.]

## ARTICLE VI

The Corporation is to have perpetual existence.

## ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

## ARTICLE VIII

Unless otherwise set forth herein, the number of directors which constitute the Board of Directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

## ARTICLE IX

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

## ARTICLE X

1. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

2. The Corporation shall have the power to indemnify, to the extent permitted by the Delaware General Corporation Law, as it presently exists or may hereafter be amended from time to time, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding.

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

## ARTICLE XI

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

## ARTICLE XII

1. Any controversy or claim brought directly, derivatively or in a representative capacity by any present or former stockholder of the Corporation as a present or former stockholder, whether against the Corporation, in the name of the Corporation or otherwise, arising out of or relating to any acts or omissions of the Corporation or any of its officers, directors, agents, affiliates, associates, employees or controlling persons (including without limitation any controversy or claim relating to a purchase or sale of securities of the Corporation), shall be settled by arbitration under the Federal Arbitration Act filed with JAMS, Inc. (“JAMS”) and in accordance with the JAMS Comprehensive Arbitration Rules & Procedures of, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. Any controversy or claim brought by the Corporation against any present or former stockholder of the Corporation in his, her or its capacity as a present or former stockholder shall also be settled by arbitration under the Federal Arbitration Act filed with JAMS and in accordance with the JAMS Comprehensive Arbitration Rules & Procedures and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. In the arbitration proceedings, the parties shall be entitled to all remedies that would be available in the absence of this ARTICLE XII and the arbitrators, in rendering their decision, shall follow the substantive laws that would otherwise be applicable and shall state the basis of their decision. The Arbitrator shall issue a written opinion that includes the factual and legal basis for any decision and award, unless the parties agree otherwise. This ARTICLE XII shall apply, without limitation, to an action arising under any federal or state securities law.

2. The arbitration of any dispute pursuant to this ARTICLE XII shall be held the County in which the Corporation’s principal executive offices are located.

3. NO CONTROVERSY OR CLAIM SUBJECT TO ARBITRATION UNDER THIS ARTICLE XII MAY BE BROUGHT IN A REPRESENTATIVE CAPACITY ON BEHALF OF A CLASS OF STOCKHOLDERS OR FORMER STOCKHOLDERS.

4. Any party, upon submitting a matter to arbitration as required by this ARTICLE XII, may seek a temporary restraining order or preliminary injunction on an individual basis from a court of competent jurisdiction pending the outcome of the arbitration. Notwithstanding the foregoing, this ARTICLE XII shall not apply to any claims to the extent prohibited by law from being arbitrated.

5. The parties to any proceeding may agree not to arbitrate all or part of any controversy or claim, on the selection of arbitrators, and the location and procedures applicable to any proceeding.

6. This ARTICLE XII is intended to benefit the officers, directors, agents, affiliates, associates, employees and controlling persons of the Corporation, each of whom shall be deemed to be a third party beneficiary of this ARTICLE XII, and each of whom may enforce this ARTICLE XII to the full extent that the Corporation could do so if a controversy or claim were brought against it.

7. If any provision or provisions of this ARTICLE XII shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability

of such provisions in any other circumstance and of the remaining provisions of this ARTICLE XII (including, without limitation, each portion of any sentence of this ARTICLE XII containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.