

FILED EFFECTIVE

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
THE FACKRELL GROUP, INC.**

2015 MAR -3 AM 11:40

SECRETARY OF STATE
STATE OF IDAHO

DOES HEREBY CERTIFY:

1. That the name of the corporation is **The Fackrell Group, Inc.** and that this corporation's original Articles of Incorporation were originally filed with the Idaho Secretary of State on December 4, 2008.

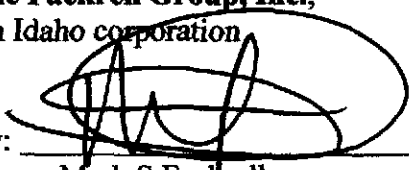
2. That the Board of Directors duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of the corporation, declaring said amendment and restatement to be advisable and in the best interests of the corporation and its stockholders, and authorizing the appropriate officers of the corporation to solicit the consent of the stockholders therefor.

3. That this Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of the corporation's Certificate of Incorporation, has been duly adopted in accordance with Sections 30-1-1003 and 30-1-1007 of the IBCA. The text of the Certificate of Incorporation of the corporation, as hereby amended and restated in its entirety, is set forth on Exhibit A attached hereto.

4. That the foregoing amendment and restatement was approved by the holders of the requisite number of shares of the corporation in accordance with Section 30-1-1006 of the IBCA.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the corporation on the 2nd day of March, 2015.

The Fackrell Group, Inc.,
An Idaho corporation

By: 
Name: Mark S Fackrell
Title: President

IDAHO SECRETARY OF STATE
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Exhibit A

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF
THE FACKRELL GROUP, INC.**

**ARTICLE I
NAME OF CORPORATION**

The name of this corporation is THE FACKRELL GROUP, INC. (the “*Corporation*”).

**ARTICLE II
PURPOSE AND EXISTANCE**

The corporation shall have perpetual existence, and the nature of the business or purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the IBCA.

**ARTICLE III
REGISTERED OFFICE AND AGENT**

The address of the registered office of the Corporation in the State of Idaho, County of Ada, is 3910 Pasadena Drive, Boise, ID 83705, and the name of the registered agent at that address is Mark S Fackrell.

**ARTICLE IV
CAPITALIZATION**

The total number of shares of all classes of stock which Corporation shall have the authority to issue is: Two Thousand (2,000) shares of Common Stock, \$0.001 par value per share (“*Common Stock*”).

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK.

1.0. **Voting.** The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by 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 30-1-721 of the Idaho Business Corporations Act (the "IBCA").

2.0. Dividends.

The Corporation shall be under no obligation to declare dividends on any shares of its capital stock.

3.0. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

The assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

3.1. *Deemed Liquidation Events.*

3.1.1. Definition. Each of the following events shall be considered a "*Deemed Liquidation Event*":

- (a) a merger or consolidation in which
 - (i) the Corporation is a constituent party or
 - (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

3.1.2. Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in clause (i) of Section 3.1.1(a) unless the agreement or plan of merger or consolidation for such transaction (the “**Merger Agreement**”) provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3.1.

3.1.3. Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. If the amount deemed paid or distributed under this Section 3.1.3 is made in property other than in cash, the value of such distribution shall be the fair market value of such property, determined as follows:

(a) For securities not subject to investment letters or other similar restrictions on free marketability:

(i) If traded on a securities exchange or the NASDAQ Global Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three (3) days prior to the date of closing of such transaction;

(ii) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) days prior to the date of closing of such transaction; and

(iii) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(b) The method of valuation of securities subject to investment letters or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder’s status as an affiliate or former affiliate) shall take into account an appropriate discount (as determined in good faith by the Board of Directors of the Corporation) from the market value as determined pursuant to Section 3.1.3(a) above so as to reflect the approximate fair market value thereof.

3.3.4. Allocation of Escrow. In the event of a Deemed Liquidation Event pursuant to Section 3.1.3(a), if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow and/or is payable to the stockholders of the Corporation subject to contingencies, the Merger Agreement shall provide that (a) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the “**Initial Consideration**”) shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3.1 and 3.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event and (b) any additional consideration

which becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3.1 and 3.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction.

4.0. Voting.

4.1. *General.* On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of Common Stock shall vote together as a single class.

4.2. *Board of Directors.*

4.2.1. Designation of Directors. There shall be two (2) Directors on the Board of Directors of the Corporation (the “**Board**”) to be designated as follows:

(a) one (1) member of the Board shall be designated and elected by the holders of a majority of the Common Stock, voting as a separate class (the “**Common Director**”); and

(b) one (1) member of the Board shall be the Chief Executive Officer (“**CEO**”), designated by (and subject to removal by) a majority of the Board of Directors, and elected by the holders of a majority of the Common Stock and Convertible Preferred Stock voting together as a single class (the “**CEO Director**”).

4.2.2. Removal, etc. Any director designated as provided in Section 4.2.1 above may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to designate such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders; *provided, however*, that the CEO Director shall be subject to removal by a majority of the Board of Directors. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Section 4.2.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Section 4.2.2.

5.0. Residual Rights. Subject to applicable law, all rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the Common Stock.

6.0. Notices. Any notice required by these Certificate of Incorporation shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) three (3) days after having been sent by

registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to the Corporation at its principal office and to each holder of record at the address of such holder appearing on the books of the Corporation.

ARTICLE V LIMITATION ON LIABILITY

To the fullest extent permitted by the IBCA, or any other applicable 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, or for any action taken, or any failure to take any action, as a director.

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

ARTICLE VI INDEMNIFICATION

The Corporation shall indemnify and hold harmless, to the fullest extent permitted by the IBCA, or any other applicable law, as the same exists or may hereafter be amended, any director of the Corporation who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "*Proceeding*") by reason of the fact that he or she, or a person for whom he or she is the legal representative, 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 or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such Proceeding. The Corporation shall be required to indemnify a person in connection with a Proceeding initiated by such person only if the Proceeding was authorized by the Board.

The Corporation shall have the power to indemnify and hold harmless, to the extent permitted by the IBCA, or any other applicable law, as the same exists or may hereafter be amended, any officer, employee or agent of the Corporation who was or is made or is threatened to be made a party or is otherwise involved in any Proceeding by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was an 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 or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such Proceeding.

Neither any amendment nor repeal of this ARTICLE VI, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this ARTICLE VI in respect of any matter occurring, or any cause of action, suit or claim accruing or arising or that, but for this ARTICLE VI, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE VII BOARD OF DIRECTORS

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by the Board of Directors in the manner provided in the Bylaws.

Except as may be otherwise provided in this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized from time to time to make, amend, supplement or repeal the Bylaws; *provided, however*, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of the Common Stock and Preferred Stock, if any, voting together as a single class; and, *provided, further*, that no amendment or supplement to the Bylaws adopted by the Board of Directors shall vary or conflict with any amendment or supplement thus adopted by the stockholders.

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

ARTICLE VIII STOCKHOLDER MEETINGS

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

ARTICLE IX EXCLUDED OPPORTUNITIES

The Corporation renounces an interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, or in being informed about, an Excluded Opportunity. An ***“Excluded Opportunity”*** is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries or (ii) any holder of Preferred Stock or any affiliate, partner, member, director, stockholder, employee, agent or other related person of any such holder,, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, ***“Covered Persons”***), unless such matter transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.
