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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q/A**

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(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2016

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 0-17995



**ZIX CORPORATION**

(Exact Name of Registrant as Specified in its Charter)

Texas  
(State of Incorporation)

75-2216818  
(I.R.S. Employer Identification Number)

2711 North Haskell Avenue  
Suite 2200, LB 36  
Dallas, Texas 75204-2960  
(Address of Principal Executive Offices)

(214) 370-2000  
(Registrant's Telephone Number, Including Area Code)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

<u>Class</u>	<u>Outstanding at November 1, 2016</u>
Common Stock, par value \$0.01 per share	53,632,410

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## Explanatory Note

The sole purpose of this Amendment No. 1 to Zix Corporation's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2016 (the "Form 10-Q") is to furnish Exhibit 101 to the Form 10-Q in accordance with Rule 405 of Regulation S-T. Due to a technical error, the eXtensible Business Reporting Language ("XBRL") data associated with the Form 10-Q attached the incorrect data files. The correct XBRL data files are attached herewith.

No other changes have been made to the Form 10-Q. This Amendment No. 1 does not reflect any subsequent events occurring after the original filing date of the Form 10-Q or modify or update in any way disclosures made in the original filing, other than the XBRL data referred to above.

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**ZIX CORPORATION**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**

(In thousands, except share and par value data)

	September 30, 2016 (unaudited)	December 31, 2015
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 24,772	\$ 28,664
Receivables, net	1,155	498
Prepaid and other current assets	2,451	2,908
Total current assets	28,378	32,070
Property and equipment, net	4,220	4,143
Goodwill	2,161	2,161
Deferred tax assets	47,053	48,912
Total assets	<u>\$ 81,812</u>	<u>\$ 87,286</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 244	\$ 370
Accrued expenses	4,407	4,697
Deferred revenue	27,347	23,182
Total current liabilities	31,998	28,249
Long-term liabilities:		
Deferred revenue	1,558	839
Deferred rent	1,395	1,426
Total long-term liabilities	2,953	2,265
Total liabilities	34,951	30,514
Commitments and contingencies (see Note 7)		
Stockholders' equity:		
Preferred stock, \$1 par value, 10,000,000 shares authorized; none issued and outstanding	—	—
Common stock, \$0.01 par value, 175,000,000 shares authorized; 78,869,191 issued and 53,605,902 outstanding in 2016 and 77,852,453 issued and 56,546,879 outstanding in 2015	768	767
Additional paid-in capital	374,088	372,400
Treasury stock, at cost; 25,263,289 common shares in 2016 and 21,305,574 common shares in 2015	(97,742)	(82,243)
Accumulated deficit	(230,253)	(234,152)
Total stockholders' equity	46,861	56,772
Total liabilities and stockholders' equity	<u>\$ 81,812</u>	<u>\$ 87,286</u>

See notes to condensed consolidated financial statements.

**ZIX CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF INCOME**  
(Unaudited)

(In thousands, except share and per share data)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Revenues	\$ 15,308	\$ 14,011	\$ 44,566	\$ 40,386
Cost of revenues	2,652	2,429	7,824	7,071
Gross margin	12,656	11,582	36,742	33,315
Operating expenses:				
Research and development	2,619	2,044	7,118	6,243
Selling, general and administrative	7,484	6,420	23,656	20,381
Total operating expenses	10,103	8,464	30,774	26,624
Operating income	2,553	3,118	5,968	6,691
Other income, net	74	110	183	162
Income before income taxes	2,627	3,228	6,151	6,853
Income tax expense	(858)	(1,301)	(2,252)	(2,635)
Net income	\$ 1,769	\$ 1,927	\$ 3,899	\$ 4,218
Basic income per common share	\$ 0.03	\$ 0.03	\$ 0.07	\$ 0.07
Diluted income per common share	\$ 0.03	\$ 0.03	\$ 0.07	\$ 0.07
Basic weighted average common shares outstanding	52,717,544	56,517,278	54,157,050	56,719,942
Diluted weighted average common shares outstanding	53,262,075	57,590,136	54,699,207	57,786,463

See notes to condensed consolidated financial statements.

**ZIX CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY**  
(Unaudited)

	Stockholders' Equity					Total Stockholders' Equity
	Common Stock Shares	Common Stock Amount	Additional Paid-In Capital	Treasury Stock	Accumulated Deficit	
(In thousands, except shares)						
Balances, December 31, 2015	77,852,453	\$ 767	\$ 372,400	\$ (82,243)	\$ (234,152)	\$ 56,772
Issuance of common stock upon exercise of stock options	94,685	1	154	—	—	155
Issuance of common stock upon vesting of restricted stock units	179,914	—	—	—	—	—
Issuance of common stock upon vesting of performance stock units	97,428	—	—	—	—	—
Issuance of restricted common stock	503,211	—	—	—	—	—
Issuance of restricted performance common stock	141,500	—	—	—	—	—
Employee stock-based compensation costs	—	—	1,534	(499)	—	1,034
Treasury repurchase program	—	—	—	(15,000)	—	(14,999)
Net income	—	—	—	—	3,899	3,899
Balances, September 30, 2016	<u>78,869,191</u>	<u>\$ 768</u>	<u>\$ 374,088</u>	<u>\$ (97,742)</u>	<u>\$ (230,253)</u>	<u>\$ 46,861</u>

See notes to condensed consolidated financial statements.

**ZIX CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Unaudited)

(In thousands)	Nine Months Ended September 30,	
	2016	2015
<b>Operating activities:</b>		
Net income	\$ 3,899	\$ 4,218
Non-cash items in net income:		
Depreciation and amortization	1,660	1,618
Employee stock-based compensation costs	1,534	1,171
Changes in deferred taxes	1,859	2,169
Changes in operating assets and liabilities:		
Receivables	(657)	209
Prepaid and other current assets	457	(126)
Accounts payable	(91)	(241)
Deferred revenue	4,884	2,906
Accrued and other liabilities	(321)	229
Net cash provided by operating activities	13,224	12,153
<b>Investing activities:</b>		
Purchases of property and equipment	(1,772)	(1,747)
Net cash used in investing activities	(1,772)	(1,747)
<b>Financing activities:</b>		
Proceeds from exercise of stock options	155	4,328
Purchase of treasury shares	(15,499)	(12,361)
Net cash used in financing activities	(15,344)	(8,033)
Increase (decrease) in cash and cash equivalents	(3,892)	2,373
Cash and cash equivalents, beginning of period	28,664	21,685
Cash and cash equivalents, end of period	\$ 24,772	\$ 24,058

See notes to condensed consolidated financial statements.

**ZIX CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
(Unaudited)

**1. Basis of Presentation**

The accompanying condensed consolidated financial statements of Zix Corporation (“ZixCorp,” the “Company,” “we,” “our,” “us”) should be read in conjunction with the audited consolidated financial statements included in the Company’s 2015 Annual Report on Form 10-K. These financial statements are unaudited, but have been prepared in the ordinary course of business for the purpose of providing information with respect to the covered interim periods. Management of the Company believes that all adjustments necessary for a fair presentation for such periods have been included and are of a normal recurring nature. The results of operations for the nine-month period ended September 30, 2016, are not necessarily indicative of the results to be expected for any future periods or for the full fiscal year.

**2. Recent Accounting Standards and Pronouncements**

*Revenue Recognition*

In May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2014-09, Revenue from Contracts with Customers (ASU 2014-09), which supersedes most current revenue recognition guidance under U.S. Generally Accepted Accounting Principles (“GAAP”). The core principle of ASU 2014-09 is to recognize revenues when promised goods or services are transferred to customers in an amount that reflects the consideration to which an entity expects to be entitled for those goods or services. ASU 2014-09 defines a five step process to achieve this core principle and, in doing so, more judgment and estimates may be required within the revenue recognition process than are required under existing U.S. GAAP.

The standard is effective for us beginning 2018, and requires using either of the following transition methods: (i) a full retrospective approach reflecting the application of the standard in each prior reporting period with the option to elect certain practical expedients, or (ii) a retrospective approach with the cumulative effect of initially adopting ASU 2014-09 recognized at the date of adoption (which includes additional footnote disclosures). We are currently evaluating the impact of our pending adoption of ASU 2014-09 on our consolidated financial statements and have not yet determined the method by which we will adopt the standard in 2018.

*Leases*

In February 2016, the FASB issued Accounting Standards Update No. 2016-02, Leases (Topic 842), which introduces a lessee model that brings most leases on the balance sheet. The new ASU eliminates the requirement in U.S. GAAP that entities use bright-line tests in determining lease classifications and requires lessors to provide additional transparency into their exposure to the changes in value of their residual assets and how they manage that exposure.

The standard is effective for us beginning 2019. We are currently evaluating the potential impact of this new guidance on our consolidated financial statements.

*Accounting for Share-Based Payments*

In March 2016, the FASB issued Accounting Standards Update No. 2016-09, Improvements to Employee Share-Based Payment Accounting (Topic 718), which simplifies several aspects of the accounting for employee share-based payment transactions including the accounting for income taxes, forfeitures, and statutory tax withholding requirements, as well as classification in the statement of cash flows.

The standard is effective for us beginning 2017. We are currently evaluating the potential impact of this new guidance on our consolidated financial statements.

**3. Stock-Based Awards and Stock-Based Employee Compensation Expense**

Our stock-based awards include (i) stock options, (ii) restricted stock awards, some of which are subject to time-based vesting (“Restricted Stock”) and some of which are subject to performance-based vesting (“Performance Stock”), and (iii) restricted stock units, some of which are subject to time-based vesting (“RSUs”) and some of which are subject to performance-based vesting (“Performance RSUs”). As of September 30, 2016, the Company had 1,998,954 stock options outstanding, 702,732 non-vested Restricted Stock awards; 121,500 non-vested Performance Stock awards; 158,086 non-vested RSUs; 90,831 non-vested Performance RSUs and 2,338,391 shares of common stock available for grant.

### Stock Option Activity

The following is a summary of all stock option transactions during the three months ended September 30, 2016:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Yrs)
Outstanding at June 30, 2016	2,013,827	\$ 3.67	
Granted at market price	100,000	\$ 3.94	
Cancelled or expired	(40,000)	\$ 4.87	
Exercised	(74,873)	\$ 1.41	
Outstanding at September 30, 2016	<u>1,998,954</u>	<u>\$ 3.74</u>	<u>4.09</u>
Options exercisable at September 30, 2016	<u>1,687,360</u>	<u>\$ 3.75</u>	<u>3.09</u>

At September 30, 2016, we had 1,160,594 stock options outstanding and 849,000 stock options exercisable with an exercise price lower than the market price of the Company's common stock on that date. The aggregate intrinsic value of these stock options were each \$1.3 million and \$1.2 million, respectively. The Company recorded a \$37 thousand excess tax benefit in the three month period ended September 30, 2016 related to the exercise of the 74,873 stock options. The Company recorded a \$39 thousand excess tax benefit in the nine month period ended September 30, 2016, related to the exercise of 94,685 options.

### Restricted Stock Activity

The following is a summary of Restricted Stock activity during the three months ended September 30, 2016:

	Restricted Shares	Weighted Average Fair Value
Non-vested restricted stock at June 30, 2016	694,472	\$ 3.86
Granted at market price	100,000	3.94
Vested	(91,740)	3.14
Cancelled	—	—
Non-vested restricted stock at September 30, 2016	<u>702,732</u>	<u>\$ 3.97</u>

The Company recorded a \$35 thousand excess tax benefit in the three month period ended September 30, 2016, related to the 91,740 Restricted Stock awards that vested. The Company recorded a \$67 thousand excess tax benefit in the nine month period ended September 30, 2016, related to 263,979 Restricted Stock awards that vested.

### Restricted Stock Unit Activity

The following is a summary of all RSU activity during the three months ended September 30, 2016:

	Restricted Stock Units	Weighted Average Fair Value
Non-vested restricted stock units at June 30, 2016	206,336	\$ 3.72
Granted at market price	—	—
Vested	(48,250)	3.07
Cancelled	—	—
Non-vested restricted stock units at September 30, 2016	<u>158,086</u>	<u>\$ 3.92</u>

The Company recorded a \$3 thousand excess tax benefit in the three month period ended September 30, 2016, related to the 48,250 RSUs that vested. The Company recorded an \$8 thousand excess tax benefit in the nine month period ended September 30, 2016, related to 179,914 RSUs that vested.



### Performance RSU Activity

The following is a summary of all Performance RSU activity during the three months ended September 30, 2016:

	Performance RSUs	Weighted Average Fair Value
Non-vested performance RSUs at June 30, 2016	110,831	\$ 3.83
Granted at market price	—	—
Vested	(20,000)	3.88
Cancelled	—	—
Non-vested performance RSUs at September 30, 2016	<u>90,831</u>	<u>\$ 3.81</u>

The Company recorded a \$3 thousand excess tax benefit in the three month period ended September 30, 2016, related to the 20,000 Performance RSUs that vested. The Company recorded a \$15 thousand excess tax benefit in the nine month period ended September 30, 2016, related to 97,428 Performance RSUs that vested.

### Performance Stock Activity

The following is a summary of all Performance Stock activity during the three months ended September 30, 2016:

	Performance Stock	Weighted Average Fair Value
Non-vested performance stock at June 30, 2016	141,500	\$ 3.61
Granted at market price	—	—
Vested	(20,000)	3.61
Cancelled	—	—
Non-vested performance stock at September 30, 2016	<u>121,500</u>	<u>\$ 3.61</u>

The Company recorded a \$5 thousand excess tax benefit in the three and nine month periods ended September 30, 2016, related to the 20,000 Performance Stock awards that vested.

The weighted average grant-date fair value of awards of Restricted Stock, RSUs, Performance RSUs and Performance Stock is based on the quoted market price of the Company's common stock on the date of grant.

### Stock-Based Compensation Expense

For the three and nine month periods ended September 30, 2016, the total stock-based employee compensation expense resulting from stock options, Restricted Stock, RSUs, Performance RSUs and Performance Stock was recorded to the following line items of the Company's condensed consolidated statements of income:

(In thousands)	Three Months Ended September 30, 2016	Nine Months Ended September 30, 2016
Cost of revenues	\$ 55	\$ 171
Research and development	63	215
Selling, general and administrative	333	1,148
Stock-based compensation expense	<u>\$ 451</u>	<u>\$ 1,534</u>

Our 2016 stock-based compensation expense includes \$280 thousand related to the second quarter accelerated vesting of equity awards related to our prior CFO's departure from the Company. A deferred tax asset totaling \$429 thousand and \$312 thousand, resulting from stock-based compensation expense associated with awards relating to the Company's U.S. operations, was recorded for the nine month periods ended September 30, 2016 and 2015, respectively. As of September 30, 2016, there was \$3.6 million of total unrecognized stock-based compensation expense related to non-vested stock-based compensation awards granted under the incentive plans. This expense is expected to be recognized over a weighted average period of 1.79 years.

For additional information regarding the Company's Equity Awards and Stock-based Employee Compensation, see Note 3 to the consolidated financial statements contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2015.

#### 4. Supplemental Cash Flow Information

Supplemental cash flow information relating to taxes and non-cash activities:

(In thousands)	Nine Months Ended September 30,	
	2016	2015
Cash income tax payments	\$ 468	\$ 306

#### 5. Receivables, net

(In thousands)	September 30,	December 31,
	2016	2015
Gross accounts receivables	\$ 8,109	\$ 7,882
Allowance for returns and doubtful accounts	(29)	(59)
Unpaid portion of deferred revenue	(6,925)	(7,325)
Note receivable	458	458
Allowance for note receivable	(458)	(458)
Receivables, net	<u>\$ 1,155</u>	<u>\$ 498</u>

The allowance for doubtful accounts includes all specific accounts receivable which we believe are likely not collectible based on known information. In addition, we record 2.5% of all accounts receivable greater than 90 days past due, net of those accounts specifically reserved, as a general allowance against accounts that could potentially become uncollectible.

The reduction for unpaid deferred revenue represents future customer service or maintenance obligations which have been billed to customers, but remain unpaid as of the respective balance sheet dates. Deferred revenue on our consolidated balance sheets represents future customer service or maintenance obligations which have been billed and collected as of the respective balance sheet dates.

The note receivable represents the remaining outstanding balance of an original note related to the sale of a product line in 2005 in the amount of \$540 thousand. This was fully reserved at the time of the sale as the note's collectability was not assured. The note receivable is fully reserved at September 30, 2016.

#### 6. Earnings Per Share and Potential Dilution

Basic earnings per share are computed using the weighted average number of common shares outstanding for the applicable period. The dilutive effect of potential common shares outstanding is included in diluted earnings per share. The computations for basic and diluted earnings per share for the three and nine months ended September 30, 2016 and 2015, are as follows:

	Three Months ended September 30,		Nine Months ended September 30,	
	2016	2015	2016	2015
Basic weighted average shares	52,717,544	56,517,278	54,157,050	56,719,942
Effect of dilutive securities:				
Employee and director stock options	299,413	767,104	313,369	773,556
Restricted stock	144,920	150,052	129,165	171,980
RSUs	52,378	108,299	60,568	88,063
Performance RSUs	22,553	47,403	22,987	32,922
Performance Stock	25,267	—	16,068	—
Potential dilutive common shares	<u>53,262,075</u>	<u>57,590,136</u>	<u>54,699,207</u>	<u>57,786,463</u>

During the three months ended September 30, 2016, weighted average shares related to 1,126,258 stock options, 98,859 shares of Restricted Stock, and 19,750 RSUs were excluded from the calculation of diluted earnings per share because these awards were anti-dilutive. During the nine months ended September 30, 2016, weighted average shares related to 1,088,122 stock options, 110,453 shares of Restricted Stock, 22,883 RSUs, 1,181 Performance RSUs, and 7,430 shares of Performance Stock were excluded from the calculation of diluted earnings per share because these awards were similarly anti-dilutive.

## 7. Commitments and contingencies

A summary of our fixed contractual obligations and commitments at September 30, 2016, is as follows:

(In thousands)	Payments Due by Period				
	Total	1 Year	Years 2 & 3	Years 4 & 5	Beyond 5 Years
Operating leases	\$ 9,391	\$ 1,520	\$ 2,453	\$ 2,081	\$ 3,337

We have not entered into any material, non-cancelable purchase commitments at September 30, 2016.

## Claims and Proceedings

We are from time to time involved in legal claims, litigation, and other legal proceedings. Although we may incur significant expenses in those matters, we expect no material adverse effect on our operations or financial results from current or concluded legal proceedings.

## 8. Fair Value Measurements

FASB guidance regarding fair value measurement establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers include: Level 1, defined as observable inputs such as quoted prices in active markets for identical assets or liabilities; Level 2, defined as inputs other than quoted prices for similar assets and liabilities in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs for which little or no market data exists, therefore requiring an entity to develop its own assumptions.

For certain of the Company's financial instruments, including cash and cash equivalents, trade receivables, and accounts payable, the fair values approximate carrying values due to the short-term maturities of these instruments. The carrying values of other current assets and accrued expenses are also not recorded at fair value, but approximate fair values primarily due to their short-term nature.

## 9. Common Stock Repurchase Program

During the three months ended September 30, 2016, the Company repurchased 257,280 shares of our common stock at an aggregate cost of \$1.0 million under a \$15.0 million share repurchase program authorized by our board of directors in January 2016. This completed the program. The Company repurchased 2,269,588 shares of our common stock at an aggregate cost of \$8.8 million, and repurchased 1,303,484 shares at an aggregate cost of \$5.2 million, during the three months ended June 30, 2016, and March 31, 2016, respectively, under the same program.

During the three months ended September 30, 2015, the Company repurchased 2,223,270 shares of our common stock at an aggregate cost of \$10.7 million under a \$15.0 million share repurchase program authorized by our board of directors in May 2015. The Company repurchased 278,600 shares of our common stock at an aggregate cost of \$1.3 million during the three months ended June 30, 2015 under the same program. No shares were repurchased during the three months ended March 31, 2015.

## 10. Income Taxes

The operating losses incurred by the Company's U.S. operations in past years and the resulting net operating losses for U.S. Federal tax purposes are subject to a \$46.1 million reserve. Any reduction to this \$46.1 million valuation allowance is based on an assessment of future utilization following accounting guidance, which relies largely on historical earnings. Using this methodology, and updating the future taxable earnings estimates based on first, second, and third quarter 2016 actual earnings, the Company believes the deferred tax asset allowance as of December 31, 2015, will remain unchanged at December 31, 2016. For this reason, the Company has recognized its first, second, and third quarter 2016 federal deferred tax provision in full. If in prospective periods we conclude our future U.S. federal taxable estimate established at the end of the year will exceed the prior year estimate, the Company will offset its federal deferred tax provision by reducing its valuation allowance by an equal amount, thereby eliminating from its deferred tax provision federal taxes in excess of the estimated Alternative Minimum Tax from the Company's financial statements. The Company will continue to reevaluate the need for its valuation allowance each quarter, following the same assessment methodology described above. Adjusting our valuation allowance could have a significant impact on operating results for each period that it becomes more likely than not that an additional portion of our deferred tax assets will or will not be realized.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### NOTE ON FORWARD-LOOKING STATEMENTS AND RISK FACTORS

Statements in this report which are not purely historical facts or which necessarily depend upon future events, including statements about trends, uncertainties, hopes, beliefs, anticipations, expectations, plans, intentions or strategies for the future, may be forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934. Forward-looking statements involve risks and uncertainties that could cause actual events or results to differ materially from the events or results described in the forward-looking statements, including risks and uncertainties described in our Annual Report on Form 10-K for the fiscal year ended December 31, 2015. Any of these risk factors could have a material adverse effect on our business, financial condition or financial results and reduce the value of an investment in our securities. We may not succeed in addressing these and other risks associated with an investment in our securities, with our business and with our achieving any forward-looking statements. Readers are cautioned not to place undue reliance on forward-looking statements. All forward-looking statements are based upon information available to us on the date the statements are made. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

#### Overview

ZixCorp® offers email encryption, data loss prevention (“DLP”), and Bring-Your-Own-Device (“BYOD”) security to meet business data protection and compliance needs. We primarily serve organizations in the healthcare, financial services, insurance and government sectors, including U.S. federal financial regulators— such as members of the *Federal Financial Institutions Examination Council* (FFIEC), divisions of the U.S. Treasury, the U.S. Securities and Exchange Commission (SEC), one in every four U.S. banks, more than 30 Blue Cross Blue Shield organizations and one in every five U.S. hospitals.

Zix® Email Encryption enables the secure exchange of email that includes sensitive information through a comprehensive secure messaging service, which allows an enterprise to use policy-driven rules to determine which email messages should be sent securely to comply with regulations or company-defined policies.

The main differentiation for Zix Email Encryption in the marketplace is our exceptional ease of use. The best example of this is our ability to provide transparent delivery of encrypted email. Most email encryption solutions are focused on the sender. They typically introduce an added burden on recipients, often requiring additional user authentication with creation of a new user identity and password. We designed our solution to alleviate the recipient's burden by enabling the delivery of encrypted email automatically and transparently. ZixCorp enables transparent delivery by (1) ZixDirectory®, the world's largest email encryption community which is designed to share identities of our tens of millions of members (growing by approximately 140,000 members per week), (2) ZixCorp's patented Best Method of Delivery®, which is designed to deliver email in the most secure, most convenient method possible for the recipient, and (3) ZixGateway®, which automatically encrypts and decrypts messages with sensitive content. The result is the industry's only transparent encrypted email, such that secure email can be exchanged without extra steps or passwords for both sender and recipients. ZixCorp delivers more than 1,100,000 encrypted messages on a typical business day. Of those messages, 70% are exchanged transparently between senders and recipients.

ZixCorp launched email-specific data loss prevention (“DLP”) solutions, ZixQuarantine™ and ZixInsight™, in 2013. By focusing strictly on email, ZixCorp addresses business's greatest source of data loss – corporate email. The straightforward DLP approach decreases the complexity and cost often associated with other DLP solutions. ZixCorp also designed its solutions to reduce deployment time from months to hours and to minimize impact on customer resources and workflow. In addition, ZixCorp offers a convenient experience for both employees interacting with our solution and administrators managing the system.

Leveraging the Company's leadership and expertise in email encryption, ZixQuarantine uses ZixCorp's proven policy and content scanning capabilities with quarantine functionality. The quarantine system and its intuitive interface allow administrators to (1) easily define policies and create custom lexicons for quarantining email messages, (2) conveniently manage quarantined messages using flexible searching and filtering options, (3) release or delete individual or multiple quarantined messages with one click, (4) review reports that monitor quarantine activities and trends and (5) automate custom notifications informing employees of quarantined messages.

ZixInsight is a simplified version of ZixQuarantine that can be used to understand the data risks in email and how the implementation of quarantine capabilities will impact a given company's workflow. ZixInsight captures data in outbound emails and highlights violations that trigger policy filters. Through our interactive, real-time interface, companies can monitor their greatest vulnerabilities, generate reports for business executives and train employees about the sensitivity of their company's data. ZixInsight

can also be an ideal add-on solution for ZixCorp Email Encryption customers who need increased visibility into the policies that are triggering encrypted email.

ZixQuarantine and ZixInsight are available as an add-on for existing ZixCorp customers or as a bundle with ZixCorp Email Encryption for new customers. ZixQuarantine is also available as a standalone solution that can easily integrate with most email systems and email encryption solutions.

In late 2013, ZixCorp launched ZixOne®, a unique mobile email app that solves the key IT challenge created by the BYOD trend in the workplace. BYOD describes the increasing trend of employees using their personal devices to conduct work. ZixOne provides access to corporate email while never allowing that data to be persistently stored on an employee's device where it is vulnerable to loss or theft. If the device is lost or stolen, an administrator can simply disable access to corporate email from that device through ZixOne.

Unlike other BYOD solutions, ZixOne meets employee demands of convenience, control and privacy while giving companies the ability to secure corporate data and meet compliance needs. With seamless access to work email in a secure, simple-to-use environment, employees can stay productive while preserving device independence. A BYOD solution that is acceptable to employees and yet provides strong data protection for corporate data solves one of today's greatest IT management challenges.

Our business operations and service offerings are supported by the ZixData Center™, a SysTrust/SOC3 certified, SOC2 accredited, PCI, DSS V3.1 certified facility. The operations of the ZixData Center are independently audited annually to maintain AICPA SysTrust/SOC3 certification in the areas of security, confidentiality, integrity and availability. Auditors also produce a SOC2 (formerly SAS70 Type II) report on the effectiveness of operational controls used over the audit period. The ZixData Center is staffed 24 hours a day and has a track record that exceeds 99.99% availability.

### **Critical Accounting Policies and Estimates**

The preparation of financial statements and related disclosures in accordance with accounting principles generally accepted in the United States requires the Company's management to make estimates and assumptions that affect the amounts reported in the Company's condensed consolidated financial statements and accompanying notes. Actual results could differ from these estimates and assumptions. Critical accounting policies and estimates are defined as those that are both most important to the portrayal of the Company's financial condition and results and require management's most subjective judgments.

We describe our significant accounting policies in Note 2, *Summary of Significant Accounting Policies*, of the Notes to Consolidated Financial Statements included in our Annual Report on Form 10-K for the year ended December 31, 2015. We discuss our *Critical Accounting Policies and Estimates* in Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K for the year ended December 31, 2015.

### **Results of Operations**

#### ***Third Quarter 2016 Summary of Operations***

##### ***Financial***

- Revenue for the quarter ended September 30, 2016, was \$15.3 million compared with \$14.0 million for the same period in 2015, representing a 9% increase.
- Gross margin for the quarter ended September 30, 2016, was \$12.7 million or 83% of revenues compared with \$11.6 million or 83% of revenues for the comparable period in 2015.
- Net income for the quarter ended September 30, 2016, was \$1.8 million compared with net income of \$1.9 million in the comparable period in 2015, representing an 8% decrease.
- Net income per diluted share was \$0.03 for the quarter ended September 30, 2016, compared with net income per diluted share of \$0.03 in the comparable period in 2015, representing a 1% decrease.
- Ending cash and cash equivalents were \$24.8 million on September 30, 2016, compared with \$24.1 million on September 30, 2015, and \$28.7 million on December 31, 2015.

### Operations

- New first year orders (“NFYOs”) for the quarter ended September 30, 2016, were \$1.9 million, compared with \$2.7 million for the same period in 2015, representing a 31% decrease.
- Total orders for the quarter ended September 30, 2016, were \$16.5 million, compared with \$14.7 million for the same period in 2015, representing a 13% increase.
- The annual contract value of our customer subscriptions as of September 30, 2016, was \$60.2 million, compared to \$55.3 million for the same period in 2015, representing a 9% increase.
- Net cash provided by operations in the nine months ended September 30, 2016 was \$13.2 million, compared to \$12.2 million for the same period in 2015, representing a 9% increase.
- As of September 30, 2016, backlog was \$81.6 million, compared with \$74.3 million as of September 30, 2015, representing a 10% increase.

### Revenues

Our Company provides subscription-based services. The following table sets forth the quarter-over-quarter comparison of the Company’s revenues:

(in thousands)	Three Months Ended September 30,		3-month Variance 2016 vs. 2015		Nine Months ended September 30,		9-month Variance 2016 vs. 2015	
	2016	2015	\$	%	2016	2015	\$	%
Revenues	\$ 15,308	\$ 14,011	\$ 1,297	9%	\$ 44,566	\$ 40,386	\$ 4,180	10%

The increase in revenue was due to the growth inherent in a successful subscription-based business model with steady additions to the subscriber base coupled with a high rate of existing customer renewals and contracted revenue in our backlog. In the first nine months of 2016, we categorized our revenue in the following core verticals: 52% healthcare, 28% financial services, 7% government sector, and 13% as other. In the first nine months of 2015, we categorized our revenue in the following core verticals: 52% healthcare, 29% financial services, 7% government sector, and 12% as other.

### Revenue Indicators — Backlog and Orders

**Backlog** — Our end-user order backlog is comprised of contractually binding agreements that we expect to amortize into revenue as the services are performed. The timing of revenue is affected by both the length of time required to deploy a service and the length of the service contract.

As of September 30, 2016, total backlog was \$81.6 million and we expect approximately 56% of the total backlog, or approximately \$45.9 million, to be recognized as revenue during the next twelve months. As of September 30, 2016, the backlog was comprised of the following elements: \$28.9 million of deferred revenue that has been billed and paid, \$6.9 million billed but unpaid, and approximately \$45.8 million of unbilled contracts. The backlog at September 30, 2016, was 10% higher than the \$74.3 million backlog at the end of the third quarter 2015 and 10% higher than the ending backlog of \$74.2 million at December 31, 2015.

**Orders** — Total orders were \$16.5 million and \$14.7 million for the three-month periods ended September 30, 2016 and 2015, respectively, representing a 13% increase year-over-year. Total orders include contract renewals, NFYOs, and in the case of new multi-year contracts, the years beyond the first year of service. NFYOs were \$1.9 million and \$2.7 million for the three-month periods ended September 30, 2016 and 2015, respectively, representing a 31% decrease year-over-year.

### Cost of Revenues

The following table sets forth the quarter-over-quarter comparison of the cost of revenues:

(in thousands)	Three Months Ended September 30,		3-month Variance 2016 vs. 2015		Nine Months ended September 30,		9-month Variance 2016 vs. 2015	
	2016	2015	\$	%	2016	2015	\$	%
Cost of revenues	\$ 2,652	\$ 2,429	\$ 223	9%	\$ 7,824	\$ 7,071	\$ 753	11%

Cost of revenues is comprised of costs related to operating and maintaining the ZixData Center, a field deployment team, customer service and support and the amortization of Company-owned, customer-based computer appliances. The increases in 2016

compared to 2015 reflected in the table above resulted primarily from increases in average headcount to support growth in customers and users, software maintenance and license support, and depreciation and other expense relating to investments in networking equipment.

### **Research and Development Expenses**

The following table sets forth the quarter-over-quarter comparison of our research and development expenses:

(in thousands)	<u>Three Months Ended September 30,</u>		<u>3-month Variance</u>		<u>Nine Months ended September 30,</u>		<u>9-month Variance</u>	
	<u>2016</u>	<u>2015</u>	<u>\$</u>	<u>%</u>	<u>2016</u>	<u>2015</u>	<u>\$</u>	<u>%</u>
Research and development expenses	\$ 2,619	\$ 2,044	\$ 575	28%	\$ 7,118	\$ 6,243	\$ 875	14%

Research and development expenses consist primarily of salary, benefits, and stock-based compensation for our development staff, independent development contractor expenses, and other direct and indirect costs associated with enhancing our existing products and services and developing new products and services. The increase in 2016 compared to 2015 reflected in the table above resulted primarily from an increase in average headcount.

### **Selling and Marketing Expenses**

The following table sets forth the quarter-over-quarter comparison of our selling and marketing expenses:

(in thousands)	<u>Three Months Ended September 30,</u>		<u>3-month Variance</u>		<u>Nine Months ended September 30,</u>		<u>9-month Variance</u>	
	<u>2016</u>	<u>2015</u>	<u>\$</u>	<u>%</u>	<u>2016</u>	<u>2015</u>	<u>\$</u>	<u>%</u>
Selling and marketing expenses	\$ 4,705	\$ 4,158	\$ 547	13%	\$ 14,197	\$ 13,811	\$ 386	3%

Selling and marketing expenses consist primarily of salary, commissions, travel, stock-based compensation and employee benefits for selling and marketing personnel as well as costs associated with promotional activities and advertising. The increase in the three months ended September 30, 2016, compared to the same period in 2015, resulted primarily from a planned increase in advertising and promotional expenses, as well as higher payroll costs associated with enhancing our product management team and an increase in expense due to the timing of deferred commission costs associated with second quarter 2016 orders. We also incurred higher stock-based compensation expense, software licensing fees, and recruiting fees.

The increase in the nine months ended September 30, 2016, compared to the same period in 2015, is primarily due to increased advertising and promotional expenses, payroll expense, stock-based compensation expense and recruiting fees. These costs were offset by a decrease in our travel expenses year over year.

### **General and Administrative Expenses**

The following table sets forth the quarter-over-quarter comparison of our general and administrative expenses:

(in thousands)	<u>Three Months Ended September 30,</u>		<u>3-month Variance</u>		<u>Nine Months ended September 30,</u>		<u>9-month Variance</u>	
	<u>2016</u>	<u>2015</u>	<u>\$</u>	<u>%</u>	<u>2016</u>	<u>2015</u>	<u>\$</u>	<u>%</u>
General and administrative expenses	\$ 2,779	\$ 2,262	\$ 517	23%	\$ 9,459	\$ 6,570	\$ 2,889	44%

General and administrative expenses consist primarily of salary and bonuses, travel, stock-based compensation and benefits for administrative and executive personnel as well as fees for professional services and other general corporate activities. The increase in the three months ended September 30, 2016 compared to the same period in 2015 resulted primarily from an increase in headcount, offset in part by a reduction in certain legal fees. Consulting, predominantly associated with strategic planning and IT projects, as well as legal fees specific to intellectual property litigation, were also higher year over year.

The increase in our general and administrative expenses in the nine months ended September 30, 2016, compared to the prior year is primarily due to an increase of \$1.9 million in legal fees associated with intellectual property litigation. We additionally

incurred increased expense of approximately \$360 thousand related to severance costs, and \$280 thousand associated with the accelerated vesting of equity awards related to our prior CFO's departure.

### ***Provision for Income Taxes***

The provision for income taxes was \$858 thousand and \$1.3 million for the three-month periods ended September 30, 2016 and 2015, respectively, and \$2.3 million and \$2.6 million for each of the nine-month periods ended September 30, 2016 and 2015, respectively. The operating losses incurred by the Company's U.S. operations in past years and the resulting net operating losses for U.S. Federal income tax purposes are subject to a \$46.1 million reserve because of the uncertainty of future taxable income levels sufficient to utilize our net operating losses and credits. Our September 30, 2016, provision of \$2.3 million includes \$1.9 million in deferred taxes, \$189 thousand in state taxes currently payable based on gross revenues, \$105 thousand related to the federal Alternative Minimum Tax, and \$100 thousand in taxes related to our Canadian operations. Our September 30, 2015, provision of \$2.6 million included \$2.2 million in deferred taxes, \$218 thousand in state taxes then payable based on gross revenues, \$126 thousand related to the federal Alternative Minimum Tax, and \$122 thousand in taxes related to our Canadian operations.

No tax penalty-related charges were accrued or recognized for the three month periods ended September 30, 2016 and 2015. Additionally, we have not taken a tax position that would have a material effect on our financial statements or our effective tax rate for the three-month period ended September 30, 2016. We are currently subject to a three-year statute of limitations by major tax jurisdictions.

At September 30, 2016, the Company partially reserved its U.S. net deferred tax assets due to the uncertainty of future taxable income being sufficient to utilize net loss carryforwards prior to their expiration, as noted above. The Company did not reserve \$47.1 million of its U.S. net deferred tax assets. The majority of this unreserved portion related to \$40.0 million in U.S. net operating losses ("NOLs") because we believe the Company will generate sufficient taxable income in future years to utilize these NOLs prior to their expiration. The remaining balance consists of \$3.9 million relating to temporary differences between GAAP and tax-related expense, \$1.8 million relating to U.S. state income tax credits and net operating loss carryovers, and \$1.3 million related to Alternative Minimum Tax credits.

Any reduction to the \$46.1 million valuation allowance related to our deferred tax asset would be based on an assessment of future utilization following accounting guidance, which relies largely on historical earnings. Using this methodology, and updating the future taxable earnings estimates based on first, second, and third quarter 2016 actual earnings, the Company believes the deferred tax asset allowance as of December 31, 2015, will remain unchanged at December 31, 2016. For this reason, the Company has recognized its first, second, and third quarter 2016 federal deferred tax provision in full. If in future periods we conclude our future U.S. federal taxable estimate established at the end of the year will exceed the prior year estimate, the Company will offset its federal deferred tax provision by reducing its valuation allowance by an equal amount, thereby eliminating from its deferred tax provision federal taxes in excess of the estimated Alternative Minimum Tax from the Company's financial statements. Significant judgment is required in determining any valuation allowance recorded against the deferred tax asset. In assessing the need for such an allowance, we consider all available evidence, including past operating results, estimates of future taxable income, and the feasibility of tax planning strategies. The Company will continue to reevaluate the need for its valuation allowance each quarter, following the same assessment methodology described above. Adjusting our valuation allowance could have a significant impact on operating results for each period during which it becomes more likely than not that an additional portion of our deferred tax assets will or will not be realized.

We have determined that utilization of existing net operating losses against future taxable income is not currently subject to limitation by Section 382 of the Internal Revenue Code. Future ownership changes, however, may limit the Company's ability to fully utilize its existing net operating loss carryforwards against future taxable income.

### ***Net Income***

Our net income for the three months ended September 30, 2016, of \$1.8 million was a decrease of \$0.2 million compared to our net income of \$1.9 million for the same period last year. The decrease in our net income was primarily due to our higher operating expenses, offset by increased revenue, as discussed above.

### ***Liquidity and Capital Resources***

#### ***Overview***

Based on our performance over the last four quarters and current expectations, we believe our cash and cash equivalents and cash generated from operations will satisfy our working capital needs, capital expenditure requirements, investment requirements, contractual obligations, commitments, future customer financings, and other liquidity requirements associated with our operations



through at least the next twelve months. We plan for and measure our liquidity and capital resources through an annual budgeting process. During the first nine months of 2016, net cash provided by operations was \$13.2 million, up 9% compared to the \$12.2 million of net cash provided by operations in the first nine months of 2015. At September 30, 2016, our cash and cash equivalents totaled \$24.8 million, a decrease of \$3.9 million from the December 31, 2015 balance, and we had no debt. This \$3.9 million decrease in our cash position resulted from our expenditure of \$15.0 million in the first nine months of 2016 under our share repurchase program, as discussed elsewhere herein.

#### Sources and Uses of Cash Summary

(In thousands)	Nine Months Ended September 30,	
	2016	2015
Net cash provided by operations	\$ 13,224	\$ 12,153
Net cash used in investing activities	\$ (1,772)	\$ (1,747)
Net cash (used in) provided by financing activities	\$ (15,344)	\$ (8,033)

Our primary source of liquidity from our operations is the collection of revenue in advance from our customers and collection of accounts receivable from our customers, net of the timing of payments to our vendors and service providers.

Our investing activities in the first nine months of 2016 consisted primarily of computer and networking equipment purchases to improve our capacity to provide hosting services. We expect our 2016 spending in this area to exceed 2015 levels. In the first nine months of 2015, approximately 80% of our spending was attributable to computer and networking equipment purchase, with the remaining spending used on furniture and leasehold improvements associated with the lease renewal for our Dallas headquarters.

Financing activities in the first nine months of 2016 include the receipt of \$155 thousand from the exercise of stock options offset by \$15.0 million used in a share repurchase program authorized by our board of directors in January 2016, and \$499 thousand used in the repurchase of common stock related to the tax impact of vesting restricted awards. Cash received from financing activities in the first nine months of 2015 included the receipt of \$4.3 million from the exercise of stock options offset by \$12.0 million used in a share repurchase program authorized by our board of directors in May 2015 and \$361 thousand used in the repurchase of common stock related to the tax impact of vesting restricted awards.

#### Options of ZixCorp Common Stock

We have significant stock options outstanding that are currently vested. There is no assurance that any of these options will be exercised; therefore, the extent of future cash inflow from additional option activity is not certain. The following table summarizes the options that were outstanding as of September 30, 2016. The vested shares are a subset of the outstanding shares. The value of the shares is the number of shares multiplied by the exercise price for each share.

Exercise Price Range	Summary of Outstanding Options			
	Outstanding Options	Total Value of Outstanding Options (In thousands)	Vested Options (included in outstanding options)	Total Value of Vested Options (In thousands)
\$1.11 - \$1.99	134,802	\$ 196	134,802	\$ 196
\$2.00 - \$3.49	527,605	1,368	527,605	1,368
\$3.50 - \$4.99	1,336,547	5,915	1,024,953	4,757
Total	1,998,954	\$ 7,479	1,687,360	\$ 6,321

#### Off-Balance Sheet Arrangements

None.

#### Contractual Obligations, Contingent Liabilities and Commitments

A summary of our fixed contractual obligations and commitments at September 30, 2016, is as follows:

(In thousands)	Payments Due by Period			
	Total	1 Year	Years 2 & 3	Beyond 3 Years
Operating leases	\$ 9,391	\$ 1,520	\$ 2,453	\$ 5,418

We have not entered into any material, non-cancelable purchase commitments at September 30, 2016.

We have severance agreements with certain employees which would require the Company to pay approximately \$4.6 million if all such employees were separated from employment with our Company following a triggering event (e.g., change of control) as defined in the severance agreements.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We have no material changes to the disclosure on this matter made in our Annual Report on Form 10-K for the year ended December 31, 2015.

**ITEM 4. CONTROLS AND PROCEDURES**

The Company, under the supervision and with the participation of its management, including the Chief Executive Officer and the Chief Financial Officer, evaluated the effectiveness of the design and operation of the Company’s “disclosure controls and procedures” (as defined in Rule 13a-15(e)) under the Exchange Act as of the end of the period covered by this report. Based on that evaluation, the Chief Executive Officer and the Chief Financial Officer concluded that the Company’s disclosure controls and procedures were effective as of September 30, 2016.

**Changes in Internal Controls over Financial Reporting**

During the nine months ended September 30, 2016, there have been no changes in our internal control over financial reporting that have materially affected or are reasonably likely to materially affect internal control over financial reporting.

**PART II — OTHER INFORMATION**

**ITEM 1. Legal Proceedings**

None.

**ITEM 1A. Risk Factors**

See Part I, Item 1A, “Risk Factors,” of the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2015. There have been no material changes in our risk factors from those disclosed in such Annual Report on Form 10-K. The risk factors in our Form 10-K should be read in conjunction with the considerations set forth above in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” set forth in our Annual Report on Form 10-K for the fiscal year ended December 31, 2015.

**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

- (a) None.
- (b) None.
- (c) Purchases of Equity Securities by the Issuer

Period	Total Number of Shares Purchased (1)(2)	Average Price Paid per Share (1)	Total Number of Shares Purchased as part of Publicly Announced Plans or Programs	Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Plans or Programs
July 1, 2016 to July 31, 2016	301,539	\$ 3.85	257,280	\$ —
August 1, 2016 to August 31, 2016	—	\$ —	—	\$ —
September 1, 2016 to September 30, 2016	—	\$ —	—	\$ —
<b>Total</b>	<u>301,539</u>	<u>\$ 3.88</u>	<u>257,280</u>	\$ —

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- 1 The shares were repurchased under the \$15 million stock repurchase program approved by our board of directors on January 5, 2016. The stock repurchase program was completed in July 2016. No shares were purchased other than through publicly announced programs during the periods shown.
  - 2 Of the total number of shares purchased for the one month period ended July 31, 2016, 30,268 shares of Restricted Stock and 24,933 RSUs represent shares of Restricted Stock and RSUs withheld by us upon the vesting of outstanding Restricted Stock or RSUs. These shares and RSUs were withheld by us to satisfy the minimum statutory tax withholding for the employees for whom Restricted Stock and RSUs vested during the period, which is required once the Restricted Stock or RSUs are vested.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**ITEM 5. OTHER INFORMATION**

On November 1, 2016, our Board of Directors (the "Board") approved and adopted the Second Amended and Restated Bylaws of the Company (the "Bylaws") and approved modifications to the Company's form of indemnification agreement. The Bylaws became effective immediately upon their adoption.

The changes to the Bylaws involve updates to the indemnification provisions in Article VI of the Bylaws that are intended to bring the indemnification rights of indemnitees in line with current practices of many public companies, which changes include, among others, changes that (1) reduce the number of days the Company has to advance indemnification expenses from ten to five days, (2) establish a rebuttable presumption that indemnitees are entitled to indemnification in all circumstances rather than only after a change in control, (3) prohibit the Company from using a "Reviewing Party's" (as defined in the Bylaws) determination that an indemnitee has not met the required standard of care or failure to make a determination regarding an indemnitee's right to indemnification as a defense to a claim for indemnification, (4) permit an indemnitee to recover all expenses related to litigation against the Company to enforce rights to indemnification regardless of whether or not such indemnitee prevails in such litigation and (5) permit indemnification for alternative dispute resolution proceedings, including mediation and arbitration.

The changes to the Company's form of indemnification agreement include, among others, changes that (1) reduce the share acquisition threshold for a change in control from 20% to 15% of the total voting equity of the Company, (2) broaden the definition of "Claim" to clarify that it applies to all proceedings brought pursuant to federal, state or other law, (3) require the Company to indemnify an indemnitee for all expenses related to a suit against the Company to enforce such indemnitee's indemnification rights, regardless of who prevails in such suit, (4) narrow the grounds on which the Company may object to an indemnitee's choice of independent legal counsel and (5) otherwise bring the form indemnification agreement in line with the Bylaws, as described above.

In addition to the foregoing changes, and in keeping with current practices at many public companies, the Company updated its form of indemnification agreement to apply to our directors and our executive and several other officers rather than just directors. On November 1, 2016, each of our current executive officers and several other officers entered into an indemnification agreement consistent with the revised form of indemnification agreement and each of our current directors replaced their existing indemnification agreements with the revised form of indemnification agreement.

The foregoing description of the Bylaws and the revised form of indemnification agreement does not purport to be complete and is qualified in its entirety by reference to the Bylaws filed as Exhibit 3.2 hereto and the form of indemnification agreement filed as Exhibit 10.1 hereto, respectively.

**ITEM 6. EXHIBITS****a. Exhibits**

The following is a list of exhibits filed as part of this Quarterly Report on Form 10-Q:

<b>Exhibit No.</b>	<b>Description of Exhibits</b>
3.1	Restated Articles of Incorporation of Zix Corporation, as filed with the Texas Secretary of State on November 10, 2005 (incorporated herein by reference to Exhibit 3.1 to Zix Corporation's Annual Report on Form 10-K for the year ended December 31, 2005 filed with the Securities and Exchange Commission on March 14, 2006, and incorporated herein by reference).
3.2*	Second Amended and Restated Bylaws of Zix Corporation, dated November 1, 2016.
10.1*	Form of Indemnification Agreement.
31.1*	Certification of David J. Wagner, President and Chief Executive Officer of the Company, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of David E. Rockvam, Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) of the Company, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1**	Certification of CEO and CFO, pursuant to 18 U.S.C. Section 1350, as adopted, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.1*	101. INS (XBRL Instance Document) 101. SCH (XBRL Taxonomy Extension Schema Document) 101. CAL (XBRL Calculation Linkbase Document) 101. LAB (XBRL Taxonomy Label Linkbase Document) 101. DEF (XBRL Taxonomy Linkbase Document) 101. PRE (XBRL Taxonomy Presentation Linkbase Document)

\* Filed herewith.

\*\* Furnished herewith.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: November 8, 2016

ZIX CORPORATION

By: /s/ DAVID E. ROCKVAM

David E. Rockvam

*Chief Financial Officer (Principal Financial  
Officer and Principal Accounting Officer)*

**Second Amended and Restated Bylaws**

**of**

**Zix Corporation**

**November 1, 2016**

**Second Amended and Restated Bylaws**

of

**Zix Corporation**

**Article I**

**Shareholders**

**Section 1.01 Time and Place of Meetings.** Meetings of the shareholders will be held at such times and places, within or outside the State of Texas, as will be determined by the Board.

**Section 1.02 Annual Meetings.** Annual meetings of shareholders will be held on such dates and at such times and places as will be determined by the Board of Directors (the "Board"), at which shareholders will elect a Board and transact such other business as may properly be brought before the meeting. Any annual meeting of shareholders may be adjourned by the chairman of the meeting from time to time and place to place. At any reconvened meeting, the shareholders may transact any business that might have been transacted at the original meeting. The Board may postpone and reschedule any previously scheduled annual meeting of shareholders.

**Section 1.03 Special Meetings.** Special meetings of the shareholders may be called at any time by the Chairman of the Board (the "Chairman") or the Board, and must be called by the president or the secretary at the request in writing of a majority of the members of the Board. Each request for a special meeting of the shareholders, and the notice sent to the shareholders, must state the purpose or purposes of the proposed meeting. Any special meeting of shareholders may be adjourned by the chairman of the meeting from time to time and place to place. At any reconvened meeting, the shareholders may transact any business which might have been transacted at the original meeting. The Board may postpone and reschedule any previously scheduled special meeting of shareholders called by the Chairman or at the request of the Board.

**Section 1.04 Notice.** Except as provided in Section 21.456 of the TBOC, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, must be given not less than 10 nor more than 50 days before the date of the meeting by or at the direction of the president, the secretary or the officer or person calling the meeting, to each shareholder entitled to vote at such meeting.

**Section 1.05 Fixing Record Date.** For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend or distribution, or in order to make a determination of shareholders for any other proper purpose, the Board may fix in advance a date as the record date for any such determinations. The record date fixed cannot be more than 60 days before, and in the case of any meeting of shareholders cannot be less than 10 days before, the date on which the particular action requiring such determination of shareholders is to be taken. If no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend or distribution, then the record date for the determination of shareholders will be the date on which notice of the meeting is mailed or the date on which the Board adopted the resolution declaring the dividend or distribution, as applicable, and in any case, such mailing date or adoption date shall comply with the 60-day and 10-day requirements set forth above. When a determination of the shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, that determination will apply to any adjournment of that meeting.

**Section 1.06 Voting List.** The officer or agent of the Corporation having charge of the stock transfer books for shares of the Corporation must make, at least 10 days before each meeting of the shareholders, a complete list of the shareholders of record on the stock transfer books of the Corporation entitled to vote at the meeting or any adjournment thereof. That list must be arranged by shareholder names in alphabetical order, with the address of and the number of voting shares held by each. That list must, for a period of 10 days before such meeting, be kept on file at the registered office or principal place of business of the Corporation and be subject to inspection by any shareholder at any time during the Corporation's usual business hours. That list also must be made available at the

time and place of the meeting and be subject to inspection by any shareholder during the whole time of the meeting.

**Section 1.07 Quorum.** A quorum will be deemed to be present at any meeting of shareholders for the transaction of business if the holders of a majority of the issued and outstanding shares entitled to vote are represented at the meeting in person or by proxy, unless a different number of shares represented is provided in the Corporation's Articles of Incorporation (as now referred to in the TBOC, the "Certificate of Formation") or in the TBOC. If a quorum is not present at any meeting of shareholders for the transaction of business, then the chairman of the meeting may adjourn the meeting until such time and to such place as is determined by a vote of the holders of a majority of the shares represented at that meeting in person or by proxy. Once a quorum is deemed to be present at a meeting of shareholders, the shareholders represented in person or by proxy at the meeting may conduct such business as may be properly brought before the meeting until it is adjourned, and the subsequent withdrawal from the meeting of any shareholder or the refusal of any shareholder represented in person or by proxy to vote will not affect the presence of a quorum at the meeting.

**Section 1.08 Voting.**

(A) Directors will be elected by a plurality of the votes cast by the holders of shares entitled to vote in the election of directors at a meeting of shareholders at which a quorum is present, *i.e.*, the person or persons receiving the greatest number of votes cast will be elected to the directorship or directorships being filled at such meeting.

(B) Directors may be removed, with or without cause, only at a special meeting of shareholders called for that purpose and at which a quorum is present, by the affirmative vote of the holders of a majority of the issued and outstanding shares entitled to vote in the election of directors.

(C) The affirmative vote of the holders of at least a majority of the shares entitled to vote on a matter and represented in person or by proxy at a meeting of shareholders at which a quorum is present will be deemed to be the act of the shareholders on that matter, other than (i) the election of directors, (ii) the removal of directors, and (iii) any matter for which the affirmative vote of the holders of a greater specified portion of the shares entitled to vote is provided for by the TBOC, the Certificate of Formation or these bylaws.

(D) For any matter as to which the TBOC, the Certificate of Formation or these bylaws specifies that approval requires the affirmative vote of holders of greater than a majority of the shares entitled to vote on that matter and represented in person or by proxy at a meeting of shareholders at which a quorum is present, the affirmative vote of the holders of at least the portion specified by the TBOC, the Certificate of Formation or these bylaws, as applicable, of the shares entitled to vote on that matter and represented in person or by proxy at a meeting of shareholders at which a quorum is present will be deemed to be the act of the shareholders on that matter.

(E) Each shareholder represented in person or by proxy at a meeting of the shareholders will be entitled to one vote for each share having voting power held by that shareholder, except to the extent that the voting rights of the shares of any class or classes are limited or denied by the Certificate of Formation.

(F) Every proxy must be executed in writing by the shareholder. A facsimile or other form of electronic transmission by the shareholder, or a photographic, photostatic or similar reproduction of a writing executed by the shareholder, will be treated as an execution in writing for purposes of this section. Any electronic transmission must contain or be accompanied by information from which it can be determined that the transmission was authorized by the shareholder. No proxy will be valid more than 11 months after the date of its execution unless otherwise provided in that proxy. Each proxy will be revocable unless the proxy states that it is irrevocable or unless it otherwise is made irrevocable by law.

**Section 1.09 Action by Written Consent Not Permitted.** Shareholders do not have the power, authority or ability to take any action by written consent in lieu of a meeting.

**Section 1.10 Conduct of a Meeting of Shareholders.** Meetings of the shareholders will be presided over by the Chairman, or in the absence of the Chairman, the president, or in the absence of the president by a chairman chosen by the Board. The secretary will act as secretary at meetings of the shareholders, or in the secretary's absence any assistant secretary or any person appointed by the individual presiding over the meeting.



**Section 1.11 Order of Business.**

(A) Annual Meetings of Shareholders. At any annual meeting of the shareholders, only such nominations of persons for election to the Board shall be made, and only such other business shall be conducted or considered, as shall have been properly brought before the meeting. For nominations to be properly made at an annual meeting, and for proposals of other business to be properly brought before an annual meeting, nominations and proposals of other business must be (a) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board, (b) otherwise properly made at the annual meeting, by or at the direction of the Board or (c) otherwise properly requested to be brought before the annual meeting by a shareholder of the Corporation in accordance with these bylaws. For nominations of persons for election to the Board or proposals of other business to be properly requested by a shareholder to be made at an annual meeting, a shareholder must (i) be a shareholder of record at the time of giving of notice of such annual meeting by or at the direction of the Board (provided, however, that if the Corporation establishes and publicly announces a record date for determining shareholders entitled to receive any notice of any such annual meeting, such record date shall instead apply) and at the time of the annual meeting, (ii) be entitled to vote at such annual meeting and (iii) comply with the procedures set forth in these bylaws as to such business or nomination. The immediately preceding sentence shall be the exclusive means for a shareholder to make nominations or other business proposals (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and included in the Corporation's notice of meeting) before an annual meeting of shareholders.

(B) Special Meeting of Shareholders. At any special meeting of the shareholders, only such business shall be conducted or considered, as shall have been properly brought before the meeting pursuant to the Corporation's notice of meeting. To be properly brought before a special meeting, proposals of business must be (a) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Chairman or the Board or (b) otherwise properly brought before the special meeting, by or at the direction of the Chairman or the Board.

Nominations of persons for election to the Board may be made at a special meeting of shareholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board or (b) provided that the Board has determined that directors shall be elected at such meeting, by any shareholder of the Corporation who (i) is a shareholder of record at the time of giving of notice of such special meeting and at the time of the special meeting, (ii) is entitled to vote at the meeting, and (iii) complies with the procedures set forth in these bylaws as to such nomination.

The immediately preceding sentence is the exclusive means for a shareholder to make nominations or other business proposals before a special meeting of shareholders (other than matters properly brought under Rule 14a-8 under the Exchange Act and included in the Corporation's notice of meeting).

(C) General. Except as otherwise provided by law, the Certificate of Incorporation or these bylaws, the chairman of the meeting has the sole power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with these bylaws and, if any proposed nomination or other business is not in compliance with these bylaws, to declare that no action shall be taken on such nomination or other proposal and such nomination or other proposal shall be disregarded.

**Section 1.12 Advance Notice of Shareholders Business and Nominations.**

(A) Annual Meeting of Shareholders. Without qualification or limitation, subject to Section 1.12(C)(4) of these bylaws, for any nominations or any other business to be properly brought before an annual meeting by a shareholder pursuant to Section 1.11(A) of these bylaws, the shareholder must have given timely notice thereof and timely updates and supplements thereof in writing to the secretary and such other business must otherwise be a proper matter for shareholder action.

To be timely, a shareholder's notice must be delivered to the secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that if the date of

the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the shareholder must be so delivered not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to the date of such annual meeting or, if the first public announcement of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall any adjournment or postponement of an annual meeting, or the public announcement thereof, commence a new time period for the giving of a shareholder's notice as described above.

Notwithstanding anything in the immediately preceding paragraph to the contrary, if the number of directors to be elected to the Board is increased by the Board, and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board at least 100 days prior to the first anniversary of the preceding year's annual meeting, a shareholder's notice required by this Section 1.12(A) will also be considered timely, but only with respect to nominees for any new positions created by such increase, if it is delivered to the secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

In addition, to be timely, a shareholder's notice must further be updated and supplemented, if necessary, so that the information provided or required to be provided in the notice will be true and correct as of the record date for the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement of the meeting, and such update and supplement must be delivered to the secretary at the principal executive offices of the Corporation not later than 5 business days after the record date for the meeting in the case of the update and supplement required to be made as of the record date, and not later than 8 business days prior to the date for the meeting, any adjournment or postponement thereof in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof.

(B) Special Meetings of Shareholders. Subject to Section 1.12(C)(4) of these bylaws, if the Corporation calls a special meeting of shareholders for the purpose of electing one or more directors to the Board, then any shareholder may nominate a person or persons (as the case may be) for election to such position(s) to be elected as specified in the Corporation's notice calling the meeting, provided that the shareholder gives timely notice thereof and timely updates and supplements thereof in writing to the secretary. In order to be timely, a shareholder's notice shall be delivered to the secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to the date of the special meeting and not later than the close of business on the later of the 90th day prior to the date of the special meeting or, if the first public announcement of the date of the special meeting is less than 100 days prior to the date of the special meeting, the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at that meeting. In no event will any adjournment or postponement of a special meeting, or the public announcement thereof, commence a new time period for the giving of a shareholder's notice as described above.

In addition, to be timely, a shareholder's notice must further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice will be true and correct as of the record date for the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement of the meeting, and the update and supplement must be delivered to the secretary at the principal executive offices of the Corporation not later than 5 business days after the record date for the meeting in the case of the update and supplement required to be made as of the record date, and not later than 8 business days prior to the date for the meeting, any adjournment or postponement thereof in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof.

(C) Other Provisions.

(1) To be in proper form, a shareholder's notice (whether given pursuant to Section 1.11(A) or 1.11(B) of these bylaws) to the secretary must include the following, as applicable:

(a) As to the shareholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, a shareholder's notice must set forth: (i) the name and address of such

shareholder, as they appear on the Corporation's books, of such beneficial owner, if any, and of their respective affiliates or associates or others acting in concert therewith, (ii) (A) the class or series and number of shares of the Corporation which are, directly or indirectly, owned beneficially and of record by such shareholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith, (B) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, or any derivative or synthetic arrangement having the characteristics of a long position in any class or series of shares of the Corporation, or any contract, derivative, swap or other transaction or series of transactions designed to produce economic benefits and risks that correspond substantially to the ownership of any class or series of shares of the Corporation, including due to the fact that the value of such contract, derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any class or series of shares of the Corporation, whether or not such instrument, contract or right shall be subject to settlement in the underlying class or series of shares of the Corporation, through the delivery of cash or other property, or otherwise, and without regard of whether the shareholder of record, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith, may have entered into transactions that hedge or mitigate the economic effect of such instrument, contract or right or any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation (any of the foregoing, a "Derivative Instrument") directly or indirectly owned beneficially by such shareholder, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith, (C) any proxy, contract, arrangement, understanding, or relationship pursuant to which such shareholder has a right to vote any class or series of shares of the Corporation, (D) any agreement, arrangement, understanding, relationship or otherwise, including any repurchase or similar so-called "stock borrowing" agreement or arrangement, engaged in, directly or indirectly, by such shareholder, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of any class or series of the shares of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such shareholder with respect to any class or series of the shares of the Corporation, or which provides, directly or indirectly, the opportunity to profit or share in any profit derived from any decrease in the price or value of any class or series of the shares of the Corporation (any of the foregoing, "Short Interests"), (E) any rights to dividends on the shares of the Corporation owned beneficially by such shareholder that are separated or separable from the underlying shares of the Corporation, (F) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such shareholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership, (G) any performance-related fees (other than an asset-based fee) that such shareholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, including without limitation any such interests held by members of such shareholder's immediate family sharing the same household, (H) any significant equity interests or any Derivative Instruments or Short Interests in any principal competitor of the Corporation held by such shareholder, and (I) any direct or indirect interest of such shareholder in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), and (iii) any other information relating to such shareholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement and form of proxy or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder;

(b) If the notice relates to any business other than a nomination of a director or directors that the shareholder proposes to bring before the meeting, a shareholder's notice must, in addition to the matters set forth in paragraph (a) above, also set forth: (i) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest of such shareholder and beneficial owner, if any, in such business, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration), and (iii) a description of all agreements, arrangements and understandings between such shareholder and beneficial owner, if any, and any other person or persons (including their names and addresses) in connection with the proposal of such business

by such shareholder and any material interest of such other person or persons, if any, in such business;

(c) As to each person, if any, whom the shareholder proposes to nominate for election or reelection to the Board, a shareholder's notice must, in addition to the matters set forth in paragraph (a) above, also set forth: (i) all information relating to such person which would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such shareholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the shareholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and

(d) All proposed nominees must meet, and must furnish to the Board a statement representing that such proposed nominee meets, any and all qualification requirements prescribed, from time to time, by any applicable federal or state law, any relevant securities exchange and the Board and Nominating and Corporate Governance Committee. The Corporation may require any proposed nominee for election or reelection to the Board to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director or an independent director of the Corporation or that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such nominee.

(2) For purposes of these bylaws, "public announcement" means disclosure on the "Investor Relations" page of the Corporation's website, in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) Notwithstanding the provisions of these bylaws, a shareholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in these bylaws; provided, however, that any references in these bylaws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 1.11 of these bylaws.

(4) Subject to Rule 14a-8 promulgated under the Exchange Act, nothing in these bylaws will be construed to permit any shareholder, or give any shareholder the right, to include or have discussed or described in the Corporation's proxy statement any nomination of director or directors or any other proposal.

## **Article II**

### **Directors**

**Section 2.01 Number of Directors.** The number of directors of the Corporation will be fixed from time to time by resolution of the Board. No decrease in the number of directors will have the effect of reducing the term of any incumbent director. Directors will be elected at the annual meeting shareholders, except as provided in section 1.11 and section 2.02 of these bylaws. Directors' terms will expire annually, upon the election of directors at the annual meeting of shareholders, but in any case, each director will hold office until (i) his successor is elected and qualified, (ii) he dies, (iii) he resigns or (iv) he is removed. Directors need not be residents of the State of Texas or shareholders of the Corporation.

**Section 2.02 Vacancies.** A vacancy in the Board (whether caused by death, resignation, retirement, removal from

office, or creation of a new directorship by an increase in the authorized number of directors or any other reason), may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum of the Board.

**Section 2.03 General Powers.** The business of the Corporation will be managed by or under the direction of its Board, which may exercise all powers of the Corporation and do all such lawful acts and things as are not directed or required to be exercised or done by the shareholders pursuant to the TBOC, the Certificate of Formation or these bylaws.

**Section 2.04 Regular Meetings.** Regular meetings of the Board will be held at such times and places as are determined by the Board, without the need for further notice of the meetings.

**Section 2.05 Special Meetings.** Special meetings of the Board may be called by or at the request of the Chairman or the president, and must be called by the president or the secretary on the written request of a majority of the directors. The authorized person or persons who call a special meeting of the Board may fix the time and place for holding that special meeting.

**Section 2.06 Notice of Special Meetings.** Notice of a special meeting of the Board must be given at least 48 hours before the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice for that meeting.

**Section 2.07 Quorum and Voting.** The presence at a meeting of the Board of a majority of the number of directors constituting the entire Board will be deemed to constitute a quorum for the transaction of business at that meeting. The affirmative vote of at least a majority of the directors present at any meeting at which a quorum is present will be deemed to be the act of the Board, except as may be otherwise specifically provided by the TBOC, the Certificate of Formation or these bylaws. If a quorum is not present at any meeting of the Board, a majority of the directors present at the meeting may adjourn the meeting to a time and place they determine.

**Section 2.08 Chairman of the Board.** The Chairman of the Board will be elected by the Board from among the directors. The Chairman position may be, but need not be, designated as an officer position. The Chairman will preside at all meetings of the Board and the shareholders, unless he is absent or designates another director to preside in his stead. In presiding at such meetings, the Chairman shall have full power, authority and discretion to take all actions necessary to provide for the orderly conduct of such meetings. The Chairman shall have such other powers and perform such other duties as designated in these bylaws and as may from time to time be granted or assigned by the Board.

**Section 2.09 Committees.** The Board may designate committees of the Board. The committees will have such names, functions, power and authority as may be designated by the Board, subject to the limitations in the TBOC, the Certificate of Formation or these bylaws. Each committee must consist of two or more directors, one of whom may be designated as chairman of the committee and may preside at all meetings of such committee. The Board may also designate one or more directors to be alternate members of any committee. The alternate members may, subject to any limitations imposed by the Board, replace absent or disqualified members at any meeting of that committee. At any meeting of a committee, a majority of the members of the committee will constitute a quorum for the transaction of business, and the act of a majority of the members present at the meeting at which a quorum is present will be deemed to be the act of the committee. The committees will keep minutes of their proceedings and will timely report their activities to the Board. The Board may establish notice and other procedural requirements for any committee. Absent such Board established requirements, each committee shall have discretion to establish its own procedural requirements.

**Section 2.10 Action by Written Consent.** Any action required or permitted to be taken at any meeting of the Board or a Board committee may be taken without a meeting and without any notice if a written consent setting forth the action taken is signed by all the directors or the members of the committee, as applicable. Such a signed, written consent will have the same force and effect as an act by vote at a meeting of the Board or the committee.

**Section 2.11 Presence at Meetings by Means of Communication Equipment.** Directors may participate in and hold a meeting of the Board and any Board committees by means of telephone conference, video conference or other

suitable electronic communications system or equipment or any combination thereof, including via the Internet, if the system or equipment permits all persons participating in the meeting to communicate with all other persons participating in the meeting. Participation in a meeting as described in this section will constitute presence in person at that meeting, except where a person participates in the meeting solely to object to the transaction of business at the meeting on the ground that the meeting was not properly called or convened.

### **Article III**

#### **Notices**

**Section 3.01 Form of Notice.** Whenever the TBOC, the Certificate of Formation or these bylaws requires notice to be given to any shareholder or director, that notice must be given either (i) in writing and effected by hand delivery, by the United States mail, with postage and fees thereon prepaid, by a nationally recognized delivery service, with fees thereon prepaid, (ii) by means of facsimile transmission, electronic mail or any other form of electronic transmission consented to by the shareholder or director, or (iii) by oral notice given in person or by telephone. A notice to a shareholder or director will be deemed given as follows: (i) if given by hand delivery, orally or by telephone, when actually received by the shareholder or director, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the shareholder or director at the shareholder or director's address appearing on the records of the Corporation, (iii) if sent by a nationally recognized delivery service, when deposited with such service, with fees thereon prepaid, addressed to the shareholder or director at the shareholder's or director's address appearing on the records of the Corporation, (iv) if sent by facsimile transmission, when transmitted to a facsimile number provided by the shareholder or director for the purpose of receiving notice, (v) if sent by electronic mail, when transmitted to an electronic mail address provided by the shareholder or director for the purpose of receiving notice, or (vi) if transmitted the shareholder or director by any other form of electronic transmission consented to by the shareholder or director, immediately upon such transmission. A shareholder or director may revoke the shareholder or director's consent to notices being given by means of electronic transmission by delivering written notice of such revocation to the Corporation. A shareholder's or director's consent to notices being given to the shareholder or director to any particular address or facsimile number for receipt of electronic transmission will be deemed revoked if the Corporation, secretary or other employee tasked with providing notice knows that it was unable to deliver notices to that address or facsimile number for two consecutive meetings or actions requiring consent in lieu of a meeting. The inadvertent failure to treat the unsuccessful transmissions as a revocation of the shareholder or director's consent does not invalidate a meeting or other action. An affidavit of the secretary or such other agent of the Corporation that notice has been given by electronic transmission is, in the absence of fraud, prima facie evidence that notice was given.

**Section 3.02 Waiver.** Whenever the TBOC, the Certificate of Formation or these bylaws requires notice to be given to any shareholder or director, a written waiver signed by the person or persons entitled to such notice, whether before or after the time stated in such notice, will be equivalent to the giving of notice. If a person entitled to notice of a meeting participates in or attends the meeting, the person's participation or attendance constitutes waiver of notice of the meeting unless the person participates in or attends the meeting solely to object to the transaction of business at the meeting on the ground that the meeting was not properly called or convened. A written waiver of notice of a meeting of shareholders, or the Board or a Board committee need not state the purpose of or the business transacted the meeting. Participation or attendance at a meeting by a person entitled to notice of the meeting constitutes a waiver by the person of notice of any particular matter at the meeting that was not described as among the purposes or business of the meeting in the notice given for the meeting, unless the person expressly objects to considering the matter when it is presented to the meeting.

### **Article IV**

#### **Officers**

**Section 4.01 General.** The officers of the Corporation elected by the Board must include a president, a secretary and a treasurer. The Board may also elect or appoint one or more vice presidents (with or without descriptive titles) including but not limited to one or more executive vice presidents and senior vice presidents. The Board may also elect or appoint one or more assistant secretaries, assistant treasurers and other officers and assistant officers and

agents as it from time to time determines to be necessary or advisable in the conduct of the affairs of the Corporation. Any two or more offices may be held by the same person. The Chairman may be, but need not be, designated as an officer position.

**Section 4.02 Election.** At the first meeting of the Board after each annual meeting of the shareholders, and at such other times as it deems appropriate, the Board will elect and appoint the officers to fill the positions described in section 4.01 of these bylaws. The Board may determine the compensation of all officers and agents of the Corporation. The election or appointment of a person as an officer or agent of the Corporation will not of itself create contract rights for that person. Officers will hold office until their successors are chosen and qualified. Any officer may be removed from office by the Board at any time, for any reason or no reason, but the removal will not prejudice the contract rights, if any, of the persons so removed. The Board may fill any vacancy occurring in any office of the Corporation.

**Section 4.03 President.** The president will be the chief executive officer of the Corporation and will be responsible for the operations and business affairs of the Corporation. The president will, in general, have supervisory power over all of the other officers and the business activities of the Corporation, subject to the direction of the Board. The president will have authority to execute bonds, deeds and contracts in the name of the Corporation; to sign stock certificates; to cause the employment or appointment of such employees and agents of the Corporation as the proper conduct of operations may require, and to fix their compensation; to remove or suspend any employee or agent, any officer subordinate to him; and, in general, to exercise all powers usually pertaining to the office of the president of a corporation, except as otherwise provided in these bylaws and resolutions adopted by the Board. The president will see that all orders and resolutions of the Board and Board committees are carried into effect.

**Section 4.04 Vice Presidents.** Vice presidents will perform all duties and services assigned to or required of them from time to time by the Board and any officer superior to them.

**Section 4.05 Secretary and Assistant Secretaries.** The secretary will attend all meetings of the Board and all meetings of the shareholders and will record the proceedings of those meetings, and will perform like duties for the Board committees as appropriate. The secretary will cause to be given all required notices of meetings of the shareholders and of the Board and Board committees. The secretary will have charge of the seal of the Corporation and authority to affix it to any document. The seal, when so affixed, will be attested by the signature of the secretary, treasurer, assistant secretary or assistant treasurer, which may be in facsimile or any form of transmission or reproduction not prohibited by applicable law. The secretary will keep and account for all books, documents, papers and records of the Corporation except those for which some other officer or agent is properly accountable. He will have authority to sign stock certificates, and will generally have all authority and perform all the duties usually pertaining to the office of the secretary of a corporation, except as otherwise provided in these bylaws and resolutions adopted by the Board. Assistant secretaries will assist in performing the duties and exercise the powers of the secretary.

**Section 4.06 Treasurer and Assistant Treasurers.** The treasurer will have active control of and will be responsible for all matters pertaining to the finances of the Corporation. The treasurer will have the care and custody of all monies, funds and securities of the Corporation and will deposit all monies and other valuable effects in the name of and to the credit of the Corporation in such depositories as may be designated by the Board. The treasurer will cause to be recorded a statement of all receipts and disbursements of the Corporation in order that proper entries may be made in the books of account. The treasurer will have the power to sign stock certificates, to endorse for deposit or collection or otherwise, all checks, drafts, notes, bills of exchange or other commercial paper payable to the Corporation and to give proper receipts or discharges for all payments to the Corporation. The treasurer will be responsible for all terms of credit granted by the Corporation and for the collection of all of its accounts. The treasurer will generally have all authority and perform all the duties usually pertaining to the office of the treasurer of a corporation, except as otherwise provided in these bylaws and resolutions adopted by the Board. Assistant treasurers will assist in performing the duties and exercise the powers of the treasurer. The treasurer may be, but need not be, the chief financial officer of the Corporation.

## Article V

### Certificates Representing Shares

**Section 5.01 Form of Certificates.** The shares of the Corporation may be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the stock of the Corporation may be uncertificated shares, such decision to be made in the Board of Directors' sole discretion. Any such resolution will not apply to shares represented by a certificate until each such certificate is surrendered to the Corporation. All signatures on the certificate referred to in this section of these bylaws may be in facsimile, engraved or printed form, to the extent permitted by law. In case any officer, transfer agent or registrar who has signed, or whose facsimile, engraved or printed signature has been placed upon a certificate will have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

**Section 5.02 Lost Certificates.** In the event of the loss, theft or destruction of any certificate of stock, another may be issued in its place pursuant to such policies as the Board of Directors may establish concerning proof of such loss, theft or destruction and concerning the giving of a satisfactory bond or bonds of indemnity.

**Section 5.03 Transfer of Shares.** Shares of stock will be transferable on the books of the Corporation by the holder thereof in person or by his duly authorized attorney. Subject to any restrictions on transfer set forth in the Certificate of Formation, these bylaws or any agreement among shareholders to which the Corporation is a party or has notice, upon surrender to the Corporation or to the transfer agent of the Corporation of the certificate representing shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it will be the duty of the Corporation or the transfer agent of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

**Section 5.04 Registered Shareholders.** The Corporation will be entitled to recognize the holder of record of any share or shares of stock as the holder in fact thereof and, accordingly, will not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it will have express or other notice thereof, except as otherwise provided by law.

**Section 5.05 Book-Entry Registration of Shares.** Notwithstanding any other provision of these bylaws that refers to certificates representing or evidencing shares of capital stock of the Corporation, shares of capital stock of the Corporation may be evidenced by registration in the holder's name in uncertificated, book-entry form in accordance with the direct registration system approved by the United States Securities and Exchange Commission and by the principal securities exchange on which the shares of the Corporation may from time to time be traded, or as may be otherwise authorized by section 3.201(b) of the TBOC, as and to the extent that the foregoing may be authorized and approved by the Board (the date of any such Board authorization and approval, the "DRS Effective Date"). Notwithstanding the foregoing, any shares of the Corporation represented by a certificate issued prior to the DRS Effective Date shall continue as certificated shares of the Corporation until such certificate is surrendered to the Corporation. No holder of any uncertificated shares of the Corporation issued pursuant to this section will be entitled to demand that such shares be certificated; provided, however, that every holder of uncertificated shares of the Corporation will be entitled to receive notice in writing of any information required to be stated on a certificate representing shares of the Corporation pursuant to sections 3.201 - 3.205 of the TBOC.

Transfers of uncertificated shares issued pursuant to this section will be made on the books of the Corporation, upon receipt of proper transfer instructions from the registered holder of such shares, or by such person's duly authorized attorney-in-fact, and upon payment of all necessary transfer taxes and compliance with appropriate procedures for transferring shares in uncertificated form. No transfer of uncertificated shares will be valid against the Corporation for any purpose until such transfer has been entered in the stock records of the Corporation by an entry showing from and to whom such shares were transferred.



## Article VI

### Indemnification

**Section 6.01 General Right to Indemnification.** The Corporation shall indemnify each person who was or is made a party to or witness in, or is threatened to be made a party to or witness in, or is otherwise involved in, any Proceeding (as defined in section 6.12 of these bylaws) by reason of the fact that such person at any time will serve, or at any time has served, as a director or officer of the Corporation, or any person who, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, manager, venturer, proprietor, trustee, employee, agent or similar functionary of any foreign or domestic corporation, partnership, limited liability company, joint venture, sole proprietorship, trust, employee benefit plan or other entity or enterprise (each such person, an "Indemnitee", and his or her status as a director, officer, partner, manager, venturer, proprietor, trustee, employee, agent or similar functionary as described above, "Corporate Status"), in each case as and to the fullest extent authorized by the TBOC or other applicable laws of the State of Texas, as the same exist or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior to that amendment), but in any event no later than 30 days after written demand is presented to the Company, against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes or penalties, and amounts paid or to be paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith, and such indemnification shall continue as to an Indemnitee who has ceased to be a director or officer and shall inure to the benefit of the Indemnitee's heirs, executors and administrators; provided, however, that, except for a Proceeding brought by an Indemnitee to enforce his or her rights to indemnification, the Corporation shall indemnify any such Indemnitee in connection with a Proceeding (or part thereof) initiated by such Indemnitee only if such Proceeding (or part thereof) was authorized by the Board. The termination of a claim in a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim. In addition, to the extent an Indemnitee is, by reason of his Corporate Status, a witness or otherwise participates in any Proceeding at a time when he is not a named defendant or respondent in the proceeding, the Corporation shall indemnify him against all expenses (including court costs and attorneys' fees) actually and reasonably incurred by him or on his behalf in connection therewith.

**Section 6.02 Advancement of Expenses.** The rights of each Indemnitee provided under this Article VI are contract rights and include, but are not limited to, the right to be indemnified and to have expenses advanced by the Corporation in all Proceedings ("Advancement of Expenses") to the fullest extent permitted by Section 8.104 of the TBOC. The Corporation shall pay all reasonable expenses incurred by or on behalf of any Indemnitee in connection with any Proceeding or claim, whether brought by the Corporation or otherwise, in advance of any determination respecting entitlement to indemnification pursuant to this Article VI and within five business days after the receipt by the Corporation of a written request from that Indemnitee accompanied by documentation reasonably evidencing such expenses and requesting payment thereof, whether before or after final disposition of such Proceeding or claim; provided that the Indemnitee undertakes and agrees in writing that he will reimburse and repay the Corporation for any expenses so advanced to the extent that it will ultimately be determined, in accordance with the provisions of Section 8.102 of the TBOC, that he is not entitled to be indemnified against such expenses. If the Corporation makes an Advancement of Expenses to an Indemnitee, the Corporation will be subrogated to every right to recovery the Indemnitee has against any insurance carrier from whom the Corporation has purchased insurance for such purpose.

**Section 6.03 Determination of Entitlement to Indemnification.** Upon written request to the Corporation by an Indemnitee for indemnification pursuant to these bylaws, a determination, if required by applicable law, with respect to that Indemnitee's entitlement thereto, unless made by a court, will be made by the Board or any Reviewing Party (as defined in section 6.12 hereof) designated by it; provided, however, that if a Change in Control (other than a Change in Control which has been approved by a majority of the members of the Board who were directors immediately before such Change in Control) will have occurred, such determination will be made by Independent Counsel (as defined in section 6.12 hereof) appointed by the Board and reasonably acceptable to the Indemnitee. The Corporation shall pay any and all reasonable fees and expenses of Independent Counsel incurred in connection with any such determination. The Indemnitee will be presumed (except as otherwise expressly provided in this Article VI) to be entitled to indemnification under this Article VI upon submission of a request to the Corporation for indemnification, and thereafter the Corporation will have the burden of proof in overcoming that presumption in reaching a determination contrary to that presumption. The presumption will be used by the Reviewing Party, or

such other person or persons determining entitlement to indemnification, as a basis for a determination of entitlement to indemnification unless the Corporation, who shall have the burden of proof, provides information sufficient to overcome that presumption by clear and convincing evidence or the investigation, review and analysis of the Reviewing Party or such other person or persons convinces him or them by clear and convincing evidence that the presumption should not apply.

**Section 6.04 Events Not Adversely Affecting Rights of Indemnitee.** The termination of any Proceeding or of any claim against any Indemnitee in a Proceeding by judgment, order, settlement (whether with or without court approval) or conviction, or on a plea of nolo contendere or its equivalent, will not by itself (i) adversely affect the right of that Indemnitee to indemnification or (ii) create a presumption that he did not conduct himself in good faith and in a manner that he reasonably believed, in the case of conduct in his official capacity, was in the best interests of the Corporation or, in all other cases, was not opposed to the best interests of the Corporation or, with respect to any criminal proceeding, that he had reasonable cause to believe that his conduct was unlawful. An Indemnitee will be deemed to have been found liable in respect of any claim only after he will have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom. In addition, neither the failure of the Reviewing Party to have made a determination as to whether the Indemnitee has met any particular standard of conduct or had any particular belief, nor an actual determination by the Reviewing Party that the Indemnitee has not met such standard of conduct or did not have such belief, prior to the commencement of legal proceedings by the Indemnitee to secure a judicial determination that the Indemnitee should be indemnified under applicable law, shall be a defense to the Indemnitee's claim or create a presumption that the Indemnitee has not met any particular standard of conduct or did not have any particular belief.

**Section 6.05 Partial Indemnification: Interest.** If it is determined, pursuant to the provisions of the TBOC or other applicable law of the State of Texas, that an Indemnitee is entitled to indemnification as to some claims, issues or matters, but not as to other claims, issues or matters, involved in any Proceeding, no matter by whom brought, the person or persons making such determination (or any court) will authorize the reasonable proration of such expenses, judgments, penalties, fines, judgments and amounts incurred in settlement with respect to which indemnification is sought by the Indemnitee, among such claims, issues or matters as the person or persons making such determination (or any court) will deem appropriate in light of all of the circumstances of such Proceeding.

If it is determined, pursuant to the provisions of the TBOC or other applicable law of the State of Texas, that certain amounts incurred by an Indemnitee are, for whatever reason, unreasonable in amount, the person or persons making such determination (or any court) will authorize indemnification to be paid by the Corporation to the Indemnitee for only such amounts as the person or persons making such determination (or any court) will deem reasonable in light of all of the circumstances.

**Section 6.06 Remedy.** If a claim for indemnification or Advancement of Expenses under this Article VI is not paid in full by the Corporation within five business days after a written claim has been received by the Corporation, then the Indemnitee may at any time thereafter seek judicial adjudication to enforce his right to recover the unpaid amount of the claim and recover from the Corporation, and will be indemnified by the Corporation against, any and all expenses he actually and reasonably incurred in that adjudication.

**Section 6.07 Employees and Agents.** The Board may authorize the Corporation to indemnify and advance expenses to an employee or agent of the Corporation to the same extent and subject to the same conditions (or to such lesser extent and/or with such other conditions as the Board may determine) under which the Corporation is required to indemnify and advance expenses to an Indemnitee under this Article VI. The Board may authorize the Corporation to indemnify and advance expenses to persons who are not or were not directors or officers of the Corporation, but who are or were serving at the request of the Corporation as a director, officer, partner, manager, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, limited liability company, joint venture, sole proprietorship, trust, employee benefit plan or other entity or enterprise against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person to the same extent and subject to the same conditions (or to such lesser extent and/or with such other conditions as the Board may determine) that the Corporation is required to indemnify and advance expenses to Indemnitees under this Article VI.

**Section 6.08 Insurance.** The Corporation may procure and maintain insurance, escrows or other similar

arrangements, at its expense, to protect itself and any person, including any Indemnitee, who is or was a director, officer, employee, agent or fiduciary of the Corporation or who is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, limited liability company, joint venture, sole proprietorship, trust, employee benefit plan or other entity or enterprise, against any expense, liability or loss asserted against or incurred by that person, in such a capacity or arising out of his status as such a person, whether or not the Corporation would have the power to indemnify that person against that expense or liability. The purchase and maintenance of any such insurance, escrow or similar arrangement will not in any way limit or affect the rights and obligations of the Corporation or an Indemnitee under this Article VI and the adoption of this Article VI will not in any way limit or affect the rights and obligations of the Corporation or of the other party or parties thereto under any such insurance, escrow or similar arrangement.

If the Indemnitee receives payment from any insurance carrier or from any plaintiff or other party in connection with any action against the Indemnitee in respect of any indemnified amounts, after payments on account of all or part of such indemnified amounts have been made by the Corporation pursuant to this Article VI, the Indemnitee will promptly reimburse the Corporation for the amount, if any, by which the sum of such payment by such insurance carrier, plaintiff or other party and payments by the Corporation to the Indemnitee exceed such indemnified amount; provided, however, that such portions, if any, of any such insurance proceeds that are required to be reimbursed to the insurance carrier under the terms of its insurance policy, such as deductible or coinsurance payments, will not be deemed to be payments to the Indemnitee for purposes of this provision. In addition, upon payment of indemnified amounts under this Article VI, the Corporation will be subrogated to the Indemnitee's rights against any insurance carrier in respect of such indemnified amounts and the Indemnitee will execute and deliver any and all instruments and documents and perform any and all other acts and deeds that the Corporation deems reasonably necessary or advisable to secure such rights.

**Section 6.09 Contribution.** If the indemnity provided for in this Article VI is unavailable to an Indemnitee for any reason whatsoever, the Corporation, in lieu of indemnifying the Indemnitee, will contribute to the amount reasonably incurred by or on behalf of the Indemnitee, whether for judgments, fines, penalties, amounts incurred in settlement or for expenses in connection with any Proceeding, no matter by whom brought, in such proportion as deemed fair and reasonable, by the person or persons entitled to make the determination as to whether the Indemnitee has met the requisite standard of conduct under the TBOC or other applicable law of the State of Texas, or by the court before which such Proceeding was brought, taking into account all of the circumstances of such Proceeding, in order to reflect (i) the relative benefits received by the Corporation and the Indemnitee as a result of the event or transaction giving rise to such Proceeding; and (ii) the relative fault of the Corporation (and its other directors, officers, employees and agents) and the Indemnitee in connection with such event or transaction.

**Section 6.10 Severability.** If a court of competent jurisdiction holds any provision of this Article VI to be invalid, illegal or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provisions of this Article VI will not in any way be affected or impaired thereby; and, to the fullest extent possible, the provisions of this Article VI will be construed so as to give the fullest possible effect to the intent manifested by the provision held invalid, illegal or unenforceable.

**Section 6.11 Nonexclusivity.** The indemnification and advancement of expense rights granted in this Article VI will not be deemed exclusive of any other rights to which an Indemnitee may be entitled under any agreement, other provision of these bylaws, vote of the Corporation's shareholders or Board, or otherwise, including, without limitation, under the TBOC or other applicable law of the State of Texas, as then in effect, both as to acts in his or her official capacity and as to acts in any other capacity. The Corporation may enter into indemnification agreements with its officers and directors that contractually provide to them indemnification and related benefits.

**Section 6.12 Defined Terms.** The following terms used herein will have the following meanings:

"Change in Control" will be deemed to have occurred if (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of securities of the Corporation representing 15% or more of the total voting power represented by the Corporation's then outstanding Voting Stock (other than any such person or any affiliate thereof that is such a 15% or greater beneficial

owner as of the date of adoption of this Article VI) or (ii) during any period of two consecutive years, individuals who at the beginning of such period constitute the Board and any new director whose election by the Board or nomination for election by the Corporation's shareholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof or (iii) the shareholders of the Corporation approve a merger or consolidation of the Corporation with any Other Organization, other than a merger or consolidation which would result in the Voting Stock of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into Voting Stock of the surviving or resulting organization) at least 85% of the total voting power represented by the Voting Stock of the Corporation or such surviving or resulting organization outstanding immediately after such merger or consolidation or (iv) the shareholders of the Corporation approve a plan of complete liquidation of the Corporation or (v) the shareholders of the Corporation approve an agreement for the sale or disposition by the Corporation of (in one transaction or a series of transactions) all or substantially all the Corporation's assets, unless the person or organization acquiring such assets is owned, directly or indirectly, by the Corporation or at least 85% of the total voting power represented by the Voting Stock of such person or organization outstanding immediately after such purchase is held by holders of Voting Stock of the Corporation outstanding immediately prior thereto.

"Independent Counsel" means, with respect to any determination involving an Indemnitee's rights to indemnification under this Article VI, a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither contemporaneously is, nor in the five years theretofore has been, retained to represent: (a) the Corporation or the Indemnitee in any matter material to either such party, (b) any other party to the claim or proceeding giving rise to a claim for indemnification hereunder or (c) the beneficial owner, directly or indirectly, of securities of the Corporation representing 15% or more of the combined voting power of the Corporation's then outstanding Voting Stock. Notwithstanding the foregoing, the term "Independent Counsel" will not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or the Indemnitee in an action to determine the Indemnitee's rights to indemnification under these bylaws.

"Other Organization" includes without limitation an "organization" as defined in Section 1.002(62) of the TBOC.

"Proceeding" means and includes any action, suit or proceeding (including any mediation, arbitration or other alternative dispute resolution proceeding), whether civil, criminal, administrative or investigative and including without limitation any "proceeding" referred to in Section 8.001(8) of the TBOC.

"Reviewing Party" means any appropriate person or body consisting of a member or members of the Board or any other person or body appointed by the Board who is not a party to the particular matter for which an Indemnitee is seeking indemnification, including, but not limited to, Independent Counsel.

"Voting Stock" means all outstanding shares of all classes and series of capital stock or other equity interests of an organization entitled to vote generally in the election of directors, managers or other governing body, considered as one class; and, if the organization will have shares of Voting Stock entitled to more or less than one vote for any such share or other equity interest, any reference in this Article VI to a percentage in voting power of Voting Stock will be calculated by reference to the percentage of votes the holders of those shares or other equity interests are entitled to cast generally in the election of directors, managers or other governing body.

## **Article VII**

### **General Provisions**

**Section 7.01 Distributions.** Distributions upon the outstanding shares of the Corporation, subject to the provisions of the TBOC, the Certificate of Formation and any agreements or obligations of the Corporation, if any, may be declared by the Board in its discretion. Distributions may be declared and paid in cash, in property or in shares of the Corporation, provided that all such declarations and payments of distributions must comply with the TBOC and the Certificate of Formation.

**Section 7.02 Reserves.** The Board may create out of the earned surplus of the Corporation such reserve or reserves as the Board from time to time, in its absolute discretion, deems proper to provide for contingencies, to repair or maintain any property of the Corporation, or for such other proper purposes as the Board deems beneficial to the Corporation, and the Board may modify or abolish any such reserve.

**Section 7.03 Fiscal Year.** The fiscal year of the Corporation will be fixed by the Board.

**Section 7.04 Seal.** The Corporation will have a seal which may be used by its proper officers by causing the seal or a facsimile of it to be impressed on, affixed to or in any manner reproduced upon, documents of any nature.

**Section 7.05 Checks.** All checks or demands for money and notes of the Corporation will be signed by such officer or officers or such other person or persons as the Board may designate from time to time.

**Section 7.06 Voting Securities Owned by Corporation.** Voting securities in any other corporation held by this Corporation will be voted by the president or secretary, unless the Board confers voting authority, which may be general or confined to specific investments, upon some other person or officer. Any person authorized to vote securities of another corporation will have the power to appoint proxies with the general power of substitution.

**Section 7.07 Resignation.** Any director, officer, employee or agent of the Corporation may resign by giving written notice to the president or secretary. The resignation will take effect at the time specified in the resignation, or immediately if no time is specified. Unless specified in such notice, the acceptance of such resignation will not be necessary to make it effective.

**Section 7.08 Gender; Singular.** The use of any gender in these bylaws will be deemed to include the other gender, and the use of the singular in these bylaws will be deemed to include the plural (and vice versa), wherever appropriate.

## Article VIII

### Amendments to Bylaws

These bylaws may be altered, amended, modified or repealed, or new bylaws may be adopted, only by (i) the Board or (ii) at a properly called and convened annual or special meeting of shareholders by the affirmative vote of the holders of at least a majority of all issued and outstanding shares entitled to vote in the election of directors.

## Article IX

### Exclusive Jurisdiction for Certain Actions

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the Federal District Court for the District of Delaware) or any Federal District Court located in the Northern District of Texas (or, if any such Federal District Court does not have jurisdiction, any State District Court located in Dallas, Texas) (each, a "Permissible Court") shall, to the fullest extent permitted by applicable law, be the sole and exclusive forums for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee or agent of the Corporation to the Corporation or the Corporation's shareholders, creditors or other constituents, (iii) any action asserting a claim against the Corporation or any director or officer of the Corporation arising pursuant to any provision of the TBOC, the Corporation's Certificate of Formation or these bylaws (as any of the foregoing may be amended from time to time), (iv) any action to interpret, apply, enforce or determine the validity of any provision of the TBOC, the Corporation's Certificate of Formation or these bylaws (as any of the foregoing may be amended from time to time), or (v) any action asserting a claim against the Corporation or any director or officer of the Corporation governed by the internal affairs doctrine, in each such case subject to said Permissible Court having personal jurisdiction over the indispensable parties named as defendants therein; *provided*, that, if and only if a Permissible Court dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state or federal court sitting in the State of Delaware or the State of Texas with subject

matter jurisdiction over the matter. To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article IX. If any provision or provisions of this Article IX 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 IX (including, without limitation, each portion of any sentence of this Article IX 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.

#### **CERTIFICATE**

These Second Amended and Restated Bylaws were approved by the Board of Directors of Zix Corporation on November 1, 2016 to become effective as of that date.

/s/ Justin K. Ferguson  
Justin K. Ferguson  
Vice President & General Counsel

## INDEMNITY AGREEMENT

This INDEMNITY AGREEMENT (this “Agreement”) is made and entered into as of the [●] day of [●], 20\_\_, by and between Zix Corporation, a Texas corporation (the “Company”), and [●] (the “Indemnitee”).

WHEREAS, the Indemnitee is or is expected to become [a member of the board of directors of the Company/an officer of the Company];

WHEREAS, in accordance with Texas law and the Company’s charter and bylaws, the Indemnitee, as [a member of the board of directors of the Company/an officer of the Company], is authorized and directed to undertake certain responsibilities on behalf of the Company and its stockholders;

WHEREAS, the Company believes that the undertaking of such responsibilities is important to the Company and its stockholders, and that the protection afforded by this Agreement will enhance the Indemnitee’s ability to discharge such responsibilities;

WHEREAS, the Company recognizes the increased risk of litigation and other claims being asserted against directors and officers of public companies; and

WHEREAS, the board of directors of the Company (the “Board”) has determined that enhancing the ability of the Company to retain and attract as directors and officers the most capable persons is in the best interests of the Company and its shareholders, and that the Company therefore should seek to legally assure such persons that indemnification and related rights will be made available to them;

NOW, THEREFORE, in consideration of the premises and of the Indemnitee providing services to the Company as [a member of its Board and, if applicable, as a member of one or more committees established by the Board/an officer], and intending to be legally bound hereby, the parties hereto agree as follows:

1. Certain Definitions:

(a) Change in Control: shall be deemed to have occurred if (i) any “person” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company or a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of capital stock of the Company, is or becomes the “beneficial owner” (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing 15% or more of the total voting power represented by the Company’s then outstanding Voting

Securities (other than any such person or any affiliate thereof that is such a 15% beneficial owner as of the date hereof), or (ii) during any period of two consecutive years, individuals who at the beginning of such period constitute the Board and any new director whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof, or (iii) the stockholders of the Company approve a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the Voting Securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into Voting Securities of the surviving entity) at least 85% of the total voting power represented by the Voting Securities of the Company or such surviving entity outstanding immediately after such merger or consolidation, or the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of (in one transaction or a series of transactions) all or substantially all the Company's assets.

(b) Claim: any threatened, pending or completed action, suit or proceeding (including any mediation, arbitration or other alternative dispute resolution proceeding), whether instituted by or in the right of the Company or by any other party, or any inquiry or investigation that the Indemnitee in good faith believes might lead to the institution of any such action, suit or proceeding, whether civil (including intentional and unintentional tort claims), criminal, administrative, investigative or other, and regardless of whether made pursuant to federal, state or other law.

(c) Expenses: include, but are not limited to, attorneys' fees and all other costs, expenses and obligations paid or incurred in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, be a witness in or participate in any Claim relating to any Indemnifiable Event. Further, Expenses include, in circumstances where the payment or reimbursement of Expenses to the Indemnitee creates tax liability for the Indemnitee, the full amount of such tax liability as well as any "gross up" that may be necessary to hold the Indemnitee fully harmless from any tax liability attributable to the reimbursement in respect of taxes.

(d) Indemnifiable Event: any event or occurrence related to the fact that the Indemnitee is or was serving as (i) a member of the Board or any committee thereof, (ii) an officer of the Company or any direct or indirect subsidiary thereof, or (iii) taking any action or doing anything under the authority and direction set forth in, or otherwise contemplated by Texas law or other controlling legal authority, the Company's charter or bylaws or any resolution or other directive adopted or authorized by the Board.

(e) Independent Legal Counsel: an attorney or law firm, selected in accordance with the provisions of Section 3, that has not performed services during the five years preceding the relevant Indemnifiable Event for (i) the Company or the Indemnitee, other than with respect to matters concerning the rights of the Indemnitee under this Agreement, (ii) any other party to the claim or proceeding giving rise to a claim for indemnification



hereunder or (iii) the beneficial owner, directly or indirectly, of securities of the Company representing 15% or more of the combined voting power of the Company's then outstanding voting stock. Notwithstanding the foregoing, the term "Independent Legal Counsel" will not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or the Indemnitee in an action to determine the Indemnitee's rights to indemnification under this Agreement.

(f) Reviewing Party: any appropriate person or body consisting of a member or members of the Board or any other person or body appointed by the Board who is not a party to the particular Claim for which the Indemnitee is seeking indemnification, or Independent Legal Counsel.

(g) Voting Securities: any securities of the Company that possess the right to vote generally in the election of directors.

## 2. Basic Indemnification Arrangement.

(a) In the event the Indemnitee was, is or becomes a party to or witness or other participant in, or is threatened to be made a party to or witness or other participant in, a Claim by reason of (or arising in part out of) an Indemnifiable Event, the Company shall indemnify the Indemnitee to the fullest extent permitted by applicable law as soon as practicable but in any event no later than 30 days after written demand is presented to the Company, against any and all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties or amounts paid in settlement) of such Claim. If so requested by the Indemnitee, the Company shall advance (within 5 business days of such request) any and all Expenses to the Indemnitee (an "Expense Advance").

(b) Notwithstanding the foregoing, (i) the obligations of the Company under Section 2(a) shall be subject to the condition that the Reviewing Party shall not have determined (in a written opinion, in any case in which the Independent Legal Counsel referred to in Section 3 hereof is involved) that the Company is prohibited by applicable law from indemnifying the Indemnitee, and (ii) the obligation of the Company to make an Expense Advance pursuant to the second sentence of Section 2(a) shall be subject to the further condition that, if, when and to the extent that the Reviewing Party determines that the Company is prohibited by applicable law from indemnifying the Indemnitee, the Company shall be entitled to be reimbursed by the Indemnitee (who hereby agrees to reimburse the Company) for all such amounts theretofore paid; provided, however, that if the Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that the Indemnitee should be indemnified under applicable law, any determination made by the Reviewing Party that the Company is prohibited by applicable law from indemnifying the Indemnitee shall not be binding and the Indemnitee shall not be required to reimburse the Company for any Expense Advance

until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed).

(c) The Company shall use all reasonable efforts to cause the Board to expeditiously appoint a Reviewing Party to pass upon, and to cause such Reviewing Party to expeditiously consider and pass upon, any request by the Indemnitee for indemnification and/or an Expense Advance under this Agreement. If there has not been a Change in Control, the Reviewing Party shall be selected by the Board, and if there has been such a Change in Control (other than a Change in Control which has been approved by a majority of the Board who were directors immediately prior to such Change in Control), the Reviewing Party shall be the Independent Legal Counsel referred to in Section 3 hereof. If there has been no determination by the Reviewing Party as to the Company's ability to indemnify the Indemnitee, or if the Reviewing Party determines that the Company is prohibited by applicable law from indemnifying the Indemnitee, the Indemnitee shall have the right to commence litigation in any court located in the City of Dallas and State of Texas having subject matter jurisdiction thereof and in which venue is proper seeking a determination by the court that the Company is not prohibited by applicable law from indemnifying the Indemnitee or challenging any contrary determination by the Reviewing Party or any aspect thereof, including the legal or factual bases therefor, and the Company hereby consents to service of process and jurisdiction and venue in any such court, and agrees to appear in any such proceeding. Any determination by the Reviewing Party shall be conclusive and binding on the Company and the Indemnitee, subject to the rights of the Indemnitee set forth in the immediately preceding sentence. As provided in Section 13 of this Agreement, if the Indemnitee commences litigation to seek such a judicial determination or otherwise challenging any determination by the Reviewing Party, the Company shall indemnify the Indemnitee against any and all expenses related to such litigation and, if requested by the Indemnitee, the Company shall make a related Expense Advance.

3. Change in Control. If there is a Change in Control of the Company (other than a Change in Control which has been approved by a majority of the Board who were directors immediately prior to such Change in Control), then with respect to all matters thereafter arising concerning the rights of the Indemnitee to indemnity payments and Expense Advances under this Agreement or any other agreement or Company charter or bylaw provision now or hereafter in effect relating to Claims for Indemnifiable Events, the Company shall seek legal advice only from Independent Legal Counsel selected by the Indemnitee and approved by the Company in the manner herein contemplated. Within five days after receiving written notice of the Indemnitee's selection, the Company may deliver a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Legal Counsel so selected does not satisfy the criteria set forth in the definition of "Independent Legal Counsel" in Section 1(e), and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person or firm so selected shall act as Independent Legal Counsel. Such counsel shall render its written opinion to the Company and the Indemnitee as to whether and to what extent the Company is legally permitted to indemnify the Indemnitee under applicable law. The Company shall pay the reasonable fees and expenses of the Independent Legal Counsel and shall fully indemnify such counsel against any and all expenses (including attorneys' fees).

fees), claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

4. Indemnification for Additional Expenses. The Company shall indemnify the Indemnitee against any and all Expenses and, if requested by the Indemnitee, shall (within 5 business days of such request) advance such Expenses to the Indemnitee, which are incurred by the Indemnitee in connection with any action brought by the Indemnitee for (i) indemnification or Expense Advances under this Agreement or any other agreement or Company charter or bylaw provision now or hereafter in effect relating to Claims for Indemnifiable Events, or (ii) recovering under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether the Indemnitee ultimately is determined to be entitled to such indemnification, Expense Advance payment or insurance recovery, as the case may be.

5. Partial Indemnity. If the Indemnitee is entitled under any provision of this Agreement or otherwise to indemnification by the Company for less than all of the Expenses, judgments, fines, penalties and amounts paid in settlement of a Claim, the Company shall indemnify the Indemnitee for that portion to which the Indemnitee is entitled. Moreover, notwithstanding any other provision of this Agreement, to the extent that the Indemnitee has been successful on the merits or otherwise in defense of any or all Claims relating in whole or in part to an Indemnifiable Event or in defense of any issue or matter therein, including dismissal without prejudice, the Indemnitee shall be indemnified against all Expenses incurred in connection therewith.

6. Presumption; Burden of Proof. In connection with any determination by the Reviewing Party or any other party as to whether the Indemnitee is entitled to be indemnified or receive an Expense Advance hereunder, (i) the presumption shall be that the Indemnitee is so entitled, and (ii) the Company shall have the burden of proof to establish to the Reviewing Party by clear and convincing evidence that the Company is prohibited by applicable law from indemnifying the Indemnitee or effecting an Expense Advance hereunder.

7. No Presumptions. For purposes of this Agreement, the termination of any claim, action, suit or proceeding by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere or its equivalent, shall not create a presumption that the Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification or advancement of Expenses is prohibited or not permitted by applicable law. In addition, neither the failure of the Reviewing Party to have made a determination as to whether the Indemnitee has met any particular standard of conduct or had any particular belief, nor an actual determination by the Reviewing Party that the Indemnitee has not met such standard of conduct or did not have such belief, prior to the commencement of legal proceedings by the Indemnitee to secure a judicial determination that the Indemnitee should be indemnified under applicable law, shall be a defense to the Indemnitee's claim or create a presumption that the Indemnitee has not met any particular standard of conduct or did not have any particular belief.

8. Nonexclusivity; Subsequent Change in Law or Jurisdiction of Incorporation. The rights of the Indemnitee hereunder shall be in addition to any rights the Indemnitee may have under

the Company's charter or bylaws, applicable law, other controlling legal authority, or otherwise. To the extent that any change in applicable law or other controlling legal authority (whether by statute or judicial decision) in the Company's jurisdiction of incorporation ("Governing Law"), permits greater, broader and/or more expansive rights to indemnification and/or advancement of expenses by agreement than that afforded under the Company's charter or bylaws and this Agreement, as the foregoing exist on the date of this Agreement, this Agreement automatically shall be deemed to be amended to provide the greater, broader and/or more expansive rights afforded by any such change; provided, however, a change in Governing Law that restricts, narrows or otherwise limits the Indemnitee's rights under this Agreement shall have no effect on this Agreement or either party's rights hereunder.

9. Amendments; Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall any such waiver constitute a continuing waiver.

10. Subrogation. To the extent of its payments to the Indemnitee under this Agreement, the Company shall be subrogated to all of the rights of recovery of the Indemnitee, who shall execute all documents required and shall do everything that may be necessary to effectuate and secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

11. Binding Effect. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors or assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), spouses, heirs, executors and personal or legal representatives. This Agreement shall continue in full force and effect regardless of whether the Indemnitee continues to serve as a director or officer of the Company.

12. Severability. The provisions of this Agreement shall be severable in the event that any of the provisions hereof (including any provision within a single section, paragraph or sentence) is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable in any respect, and the validity and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired and shall remain enforceable to the fullest extent permitted by law.

13. Fees and Expenses of Enforcement. It is the intent of the Company that Indemnitee not be required to incur legal fees and/or other Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement, by litigation or otherwise, because the cost and expense thereof would substantially detract from the benefits intended to be extended to the Indemnitee hereunder. Accordingly, without limiting the generality or effect of any other provision hereof, if it should appear to Indemnitee that the Company has failed to comply with any of its obligations under this Agreement or in the event that the Company or any other person takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, the

Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder, the Company irrevocably authorizes the Indemnitee from time to time to retain counsel of Indemnitee's choice, at the expense of the Company, to advise and represent the Indemnitee in connection with any such interpretation, enforcement or defense, including without limitation the initiation or defense of any litigation or other legal action, whether by or against the Company or any director, officer, shareholder or other person affiliated with the Company. Without respect to whether the Indemnitee prevails, in whole or in part, in connection with any of the foregoing, the Company will pay and be solely financially responsible for any and all attorneys' and related fees and expenses incurred by the Indemnitee in connection with any of the foregoing. The Indemnitee shall be entitled to the advancement of all attorneys' and related fees and expenses to the full extent contemplated by Section 2 hereof in connection with any such action or proceeding.

14. Governing Law. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws applicable to contracts made and to be performed in the jurisdiction in which the Company is incorporated at the time of the applicable Indemnifiable Event, without giving effect to the principles of choice or conflicts of laws.

*[Remainder of page intentionally left blank -- signature page follows.]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first set forth above.

ZIX CORPORATION

David Wagner  
President and Chief Executive Officer

By: \_\_\_\_\_

INDEMNITEE

[NAME]

\_\_\_\_\_

## CERTIFICATION

I, David J. Wagner, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Zix Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 8, 2016

/s/ DAVID J. WAGNER

David J. Wagner

*President and Chief Executive Officer*

## CERTIFICATION

I, David E. Rockvam, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Zix Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 8, 2016

/s/ DAVID E. ROCKVAM

David E. Rockvam

*Chief Financial Officer (Principal Financial Officer  
and Principal Accounting Officer)*



**CERTIFICATION OF CEO AND CFO PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

November 8, 2016

Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Ladies and Gentlemen:

The certifications set forth below are being submitted in connection with the Quarterly Report on Form 10-Q (the "Report") of Zix Corporation for the purpose of complying with Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code.

David J. Wagner, the chief executive officer, and David E. Rockvam, the chief financial officer of Zix Corporation, each certifies that to the best of his knowledge and in the respective capacities as an officer of Zix Corporation:

1. the Report fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Zix Corporation.

/s/ DAVID J. WAGNER

Name: David J. Wagner

Title: President and Chief Executive Officer

/s/ DAVID E. ROCKVAM

Name: David E. Rockvam

Title: Chief Financial Officer

