

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	CHANGE OF NAME		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Trinity Convergence, Inc.		11/06/2006	CORPORATION: NORTH CAROLINA
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Trinity Convergence, Inc.		
<b>Street Address:</b>	615 Davis Drive		
<b>Internal Address:</b>	Suite 100		
<b>City:</b>	Morrisville		
<b>State/Country:</b>	NORTH CAROLINA		
<b>Postal Code:</b>	27560		
<b>Entity Type:</b>	CORPORATION: DELAWARE		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	3205074	VERICALL EDGE	
<b>CORRESPONDENCE DATA</b>			
Fax Number:	(919)781-4865		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	919-781-4000		
Email:	csorey@wyrick.com		
Correspondent Name:	Christopher L. Sorey, Esq.		
Address Line 1:	4101 Lake Boone Trail		
Address Line 2:	Suite 300		
Address Line 4:	Raleigh, NORTH CAROLINA 27607		
ATTORNEY DOCKET NUMBER:	012283.008		
NAME OF SUBMITTER:	Christopher L. Sorey, Esq.		
Signature:	/CLS/		

OP \$40.00 3205074

Date:

01/08/2010

**Total Attachments: 26**

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# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "TRINITY CONVERGENCE, INC.", FILED IN THIS OFFICE ON THE SIXTH DAY OF NOVEMBER, A.D. 2006, AT 1:38 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



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061016426

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5174134

DATE: 11-06-06

TRADEMARK

REEL: 004127 FRAME: 0008

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
TRINITY CONVERGENCE, INC.**

Trinity Convergence, Inc., a corporation organized under the laws of the State of Delaware (the "*Company*") hereby certifies as follows:

A. The name of the Company is Trinity Convergence, Inc. The original Certificate of Incorporation of the Company was filed with the Secretary of State of Delaware on October 25, 2006.

B. All amendments to the Certificate of Incorporation reflected herein have been duly authorized and adopted by the Company's Board of Directors and stockholders in accordance with the provisions of Sections 242 and 245 of the Delaware General Corporation Law ("*DGCL*").

C. This Amended and Restated Certificate of Incorporation (the "*Restated Certificate*") of the Company restates, integrates and further amends the Certificate of Incorporation of the Company. The text of the Certificate of Incorporation is hereby amended and restated in its entirety to read as set forth in Exhibit A attached hereto.

*IN WITNESS WHEREOF*, the Company has caused this Restated Certificate to be signed by the duly authorized officer below on November 6, 2006.

**TRINITY CONVERGENCE, INC.**

By: /s/ Ajit Pendse  
Name: Ajit Pendse  
Title: President and Chief Executive Officer

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 01:48 PM 11/06/2006  
FILED 01:38 PM 11/06/2006  
SRV 061016426 - 4240969 FILE

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## **EXHIBIT A**

### **ARTICLE I**

#### **Name**

The name of the corporation is Trinity Convergence, Inc. (the "Company")

### **ARTICLE II**

#### **Capitalization**

A. The Company is authorized to issue two classes of stock to be designated, respectively, "**Common Stock**" and "**Preferred Stock**." The total number of shares which the Company is authorized to issue is Three Hundred Sixty-Two Million Eighty-Six Thousand Two Hundred Fifty-One (362,086,251) shares, One Hundred Ninety-Nine Million Six Hundred Seventy-Five Thousand Eight Hundred Seventy-Two (199,675,872) shares of which shall be Common Stock (the "**Common Stock**") and One Hundred Sixty-Two Million Four Hundred Ten Thousand Three Hundred Seventy-Nine (162,410,379) shares of which shall be Preferred Stock (the "**Preferred Stock**"). The Preferred Stock shall have a par value of \$0.0001 per share and the Common Stock shall have a par value of \$0.0001 per share. The Company shall from time to time increase the authorized amount of its Common Stock if at any time the number of shares of Common Stock remaining unissued and available for issuance shall not be sufficient to permit conversion of the Preferred Stock into Common Stock in accordance with any of the terms governing such conversion.

#### **B. COMMON STOCK.**

Except as otherwise provided herein or as otherwise required by law, all shares of Common Stock shall be identical in all respects and shall entitle the holders thereof to the same rights and privileges, subject to the same qualifications, limitations and restrictions. The designations, preferences, qualifications, limitations, restrictions and special or relative rights granted to or imposed upon the Common Stock of the Company are as follows:

1. **Voting.** Except as otherwise provided herein or by law, and subject to any voting rights provided to holders of Preferred Stock, the Common Stock shall vote together with the Preferred Stock (voting on an as-if-converted basis) as one (1) single class at each annual or special meeting of shareholders (or pursuant to any written consent in lieu thereof). Each holder of shares of Common Stock shall be entitled to cast one (1) vote in person or by proxy (or pursuant to such written consent) for each share of Common Stock standing in such holder's name on the stock transfer records of the Company. A simple majority of the votes attaching to the outstanding shares of Common Stock shall be sufficient to effect any resolution of the holders of Common Stock voting as a separate class on all matters as to which holders of Common Stock shall be entitled to vote. Except as otherwise provided herein or by law, in each case where the Common Stock and Preferred Stock vote together as one (1) class, a simple majority of the votes attaching to the outstanding shares of Common Stock and Preferred Stock (voting on an as-if-converted basis) shall be sufficient to effect any such resolution of such Common Stock and Preferred Stock.

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2. **Dividends.** Subject to the rights of the holders of Preferred Stock, and subject to any other provisions set forth herein, holders of shares of Common Stock shall be entitled to receive such dividends and other distributions, in cash, stock or property of the Company, when, as and if declared by the Board of Directors of the Company (the "**Board of Directors**") from time to time out of assets or funds of the Company legally available therefor.

3. **Liquidation, Dissolution, Etc.** Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary (a "**Liquidation Event**"), the holders of shares of Common Stock shall be entitled to receive any assets and funds of the Company available for distribution after payments to creditors and to the holders of any Preferred Stock that may at the time be outstanding, in proportion to the number of shares held by them, subject to the rights of the holders of Preferred Stock.

4. **No Preemptive, Subscription, Redemption or Conversion Rights.** No holder of shares of Common Stock shall be entitled to preemptive, subscription, redemption or conversion rights.

C. Thirty-Three Million Five Hundred Eight-Two Thousand Three Hundred Twenty-Two (33,582,322) of the authorized shares of Preferred Stock are hereby designated "Series A Convertible Preferred Stock" (the "**Series A Preferred**"), Sixty-Four Million Four Hundred Forty-One Thousand Seven Hundred Ninety-One (64,441,791) of the authorized shares of Preferred Stock are hereby designated "Series B Convertible Preferred Stock" (the "**Series B Preferred**") and Sixty-Four Million Three Hundred Eighty-Six Thousand Two Hundred Sixty-Six (64,386,266) of the authorized shares of Preferred Stock are hereby designated "Series C Convertible Preferred Stock" (the "**Series C Preferred**").

D. The rights, preferences, privileges, restrictions and other matters relating to the Preferred Stock are as follows:

1. **DIVIDEND RIGHTS.**

(a) Holders of Preferred Stock, in preference to the holders of Common Stock and prior to any payments of any dividends to holders of any other class or series of capital stock of the Company, shall be entitled to receive, when, as and if declared by the Board of Directors, on a pari passu basis, but only out of funds that are legally available therefor, dividends at the rate of (i) eight percent (8%) of the Series A Original Issue Price (as defined below) per annum on each outstanding share of Series A Preferred; (ii) eight percent (8%) of the Series B Original Issue Price (as defined below) per annum on each outstanding share of Series B Preferred; and (iii) eight percent (8%) of the Series C Original Issue Price (as defined below) per annum on each outstanding share of Series C Preferred, (such Series A Original Issue Price, Series B Original Issue Price, Series C Original Issue Price and the number of shares of Preferred Stock to be adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof). The right to such dividends on shares of the Preferred Stock shall not be cumulative and no rights shall accrue to holders of the Preferred Stock by reason of the fact that dividends on said shares are or are not declared in any prior year. Such dividends shall be payable, at the option of the holders of at least a majority of the Preferred Stock, in cash or in

shares of Series A Preferred, Series B Preferred or Series C Preferred (as applicable). If such dividends are payable in shares of Series A Preferred, Series B Preferred and/or Series C Preferred (as applicable), for purposes of determining the number of shares of such Preferred Stock to be issued in satisfaction of the dividend, the per share value of each share of Series A Preferred so issued shall be equal to the "Series A Preferred Conversion Price" (as herein defined), the per share value of each share of Series B Preferred so issued shall be equal to the "Series B Preferred Conversion Price" (as herein defined) and the per share value of each share of Series C Preferred so issued shall be equal to the "Series C Preferred Conversion Price" (as herein defined). Notwithstanding anything herein to the contrary, the rate of the non-cumulative dividends set forth in this Section D.1(a) shall increase to twelve percent (12%) upon any default in the redemption of shares of the Preferred Stock pursuant to Section 5 below. The Board of Directors may fix in advance a record date for the determination of holders of shares of Preferred Stock entitled to receive payment of any dividend thereon (regardless of whether such dividend is payable pursuant to Section D.1. hereof or otherwise), which record date shall be no more than thirty (30) calendar days or less than ten (10) calendar days prior to the date fixed for the payment thereof.

(b) The "*Series A Original Issue Price*" of the Series A Preferred shall be \$0.1261 per share, the "*Series B Original Issue Price*" of the Series B Preferred shall be \$0.1511 per share and the "*Series C Original Issue Price*" of the Series C Preferred shall be \$0.1958 per share.

(c) So long as any shares of Preferred Stock are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Common Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock until all dividends (set forth in Section 1(a) above) on the Preferred Stock shall have been paid or declared and set apart, except for acquisitions of Common Stock by the Company pursuant to agreements approved by the Board of Directors which permit the Company to repurchase such shares at cost upon termination of services to the Company.

(d) In the event cash dividends are paid on any share of Common Stock (and as a condition precedent to the payment of any such dividends), the Company shall first pay an additional dividend on all outstanding shares of Preferred Stock *pari passu* and in an amount per share (on an as-if-converted basis) equal to the amount paid or set aside for each share of Common Stock and such dividend shall be in addition to any dividends accruing pursuant to Section D.1(a) above or previously accrued pursuant to Section D.1(e) below.

(e) Notwithstanding Section D.1.(a) above, the holders of Preferred Stock, in preference to the holders of Common Stock and prior to any payment of any dividends to holders of any other class or series of capital stock of the Company, shall be entitled to receive on a *pari passu* basis, but only out of funds that are legally available therefor, dividends which shall have accrued from the date of issuance of such shares of Preferred Stock to October 25, 2006 in the respective amounts set forth below (such dividend amounts to be adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof):

- (i) \$0.04802 on each share for the shares of Series A Preferred issued on February 14, 2002;
- (ii) \$0.04415 on each share for the shares of Series A Preferred issued on July 2, 2002;
- (iii) \$0.05262 on each share for the shares of Series B Preferred issued on July 11, 2002;
- (iv) \$0.04835 on each share for the shares of Series B Preferred issued on November 15, 2002;
- (v) \$0.04096 on each share for the shares of Series B Preferred issued on June 23, 2002;
- (vi) \$0.03955 on each share for the shares of Series C Preferred issued on April 29, 2004; and
- (vii) \$0.03076 on each share for the shares of Series C Preferred issued on November 17, 2004.

Such dividends described in this Section D.1(e) shall be due and payable with respect to a share of Preferred Stock: (i) when, as and if a dividend is first declared pursuant to Section D.1(a) above by the Board of Directors, (ii) upon a Liquidation Event, (iii) upon conversion of such share of Preferred Stock pursuant to Section D.4. below, (iv) upon redemption of such share of Preferred Stock pursuant to Section D.5. below, or (v) upon the date on which such share of Preferred Stock is otherwise acquired by the Company. Such dividends shall be payable, at the option of the holders of at least a majority of the Preferred Stock, in cash or in shares of Series A Preferred, Series B Preferred or Series C Preferred (as applicable). If such dividends are payable in shares of Series A Preferred, Series B Preferred and/or Series C Preferred (as applicable), for purposes of determining the number of shares of such Preferred Stock to be issued in satisfaction of the dividend, the per share value of each share of Series A Preferred so issued shall be equal to the "Series A Preferred Conversion Price" (as herein defined), the per share value of each share of Series B Preferred so issued shall be equal to the "Series B Preferred Conversion Price" (as herein defined) and the per share value of each share of Series C Preferred so issued shall be equal to the "Series C Preferred Conversion Price" (as herein defined).

## 2. VOTING RIGHTS.

(a) **General Rights.** Except as otherwise provided herein or as required by law, the Preferred Stock (voting on an as-if-converted basis) shall vote together with the Common Stock as one (1) single class at any annual or special meeting of the shareholders (or pursuant to any written consent in lieu thereof). Each holder of shares of the Preferred Stock shall be entitled to cast in person or by proxy (or pursuant to written consent) the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock



could be converted (pursuant to Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Common Stock and shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the Company. Except as otherwise provided herein or by law or in a written agreement among the holders of Preferred Stock, a simple majority of the votes attaching to the outstanding shares of Preferred Stock shall be sufficient to effect any resolution of the holders of Preferred Stock voting as a separate class. Except as otherwise provided herein or by law, in each case where the Preferred Stock and the Common Stock vote together as one (1) class, a simple majority of the votes attaching to the outstanding shares of Preferred Stock (voting on an as-if-converted basis) and Common Stock shall be sufficient to effect any such resolution of such Preferred Stock and Common Stock.

**(b) Separate Vote of Preferred Stock.** In addition to any other vote or consent required herein or by law, for so long as at least 500,000 shares of Preferred Stock are outstanding (as adjusted for stock splits, dividends, recapitalizations and the like after the filing date hereof), the affirmative vote or written consent of the holders of at least a majority of the outstanding shares of Preferred Stock, voting together as one (1) single class, shall be necessary and required for effecting any action which:

**(i)** Amends, alters or repeals any provision of the Certificate of Incorporation or Bylaws of the Company (including, without limitation, any change in the size or composition of the Board of Directors or the procedure for election of directors); provided, that for purposes of amending (A) the eighty percent (80%) threshold in Section D.4(1) such amendment shall be approved by the affirmative consent of at least eighty percent (80%) of the outstanding shares of Preferred Stock, voting together as one (1) single class, and (B) the sixty-six and two-thirds percent (66 2/3%) threshold in Section D.5., such amendment shall be approved by the affirmative consent of at least sixty-six and two-thirds percent (66 2/3%) of the outstanding shares of Preferred Stock, voting together as one (1) class.

**(ii)** Effects, or authorizes, approves or agrees to effect, any "Asset Transfer" or "Acquisition" (each as defined in Section 3) or any Liquidation Event;

**(iii)** Increases the authorized number of shares of Preferred Stock;

**(iv)** Authorizes, creates, designates or issues, whether by reclassification or otherwise, (A) any shares of Preferred Stock or any other securities convertible into or exchangeable for shares of Preferred Stock or (B) any shares of any class or series of stock or any other securities convertible into or exchangeable or exercisable for equity securities of the Company ranking on parity with or having preference over the Preferred Stock in any way;

**(v)** Effects, or approves, authorizes or agrees to effect, a merger, reorganization or sale or transfer of the capital stock of the Company, or effects, or approves, authorizes or agrees to effect, any sale or transfer of the capital stock of any subsidiary

of the Company or any sale, lease, license or other disposition of all or substantially all of the assets of any subsidiary of the Company;

(vi) Redeems or otherwise acquires any shares of capital stock of the Company (other than repurchases from employees pursuant to rights of the Company described in any stock restriction or stock option grant agreements approved by the Board of Directors or as otherwise described in Section 5 hereof);

(vii) Effects, approves, authorizes or agrees to effect, a reclassification or recapitalization of the outstanding capital stock of the Company;

(viii) Alters or changes any of the powers, preferences, privileges or rights of any series of Preferred Stock or increases or decreases the total number of authorized shares of any series of Preferred Stock;

(ix) Declares or pays any dividend or makes any distribution on any shares of Common Stock or any series of Preferred Stock other than the Series A Preferred, the Series B Preferred and the Series C Preferred;

(x) Authorizes any public offering with respect to the capital stock of the Company other than the "Qualified Initial Public Offering" (as herein defined);

(xi) Increases the number of shares of Common Stock issuable to employees, officers or directors of, or consultants to, the Company, as set forth in Section 4(i)(iii)(B) hereof;

(xii) Authorizes any change in the fundamental business of the Company; or

(xiii) Commits or obligates the Company to do any of the foregoing.

(c) **Election of Board of Directors.** The authorized number of directors shall be seven (7).

(i) Except as otherwise provided in Section 6 hereof, the directors constituting the Board of Directors shall be elected as follows:

(A) **Preferred Stock Directors.** For so long as at least 500,000 shares of Preferred Stock are outstanding (as adjusted for stock splits, dividends, recapitalizations and the like after the filing date hereof), the holders of Preferred Stock, voting together as a separate class, shall be entitled to elect three (3) members of the Board of Directors (individually, a "*Preferred Stock Director*" and together, the "*Preferred Stock Directors*") at each meeting or pursuant to a written consent for the election of directors. At any time and from time to time, acting by written consent or pursuant to a shareholder vote, the holders of Preferred Stock, voting together as a separate class, shall be entitled to remove from office a Preferred

Stock Director, with or without cause, and fill any vacancy caused by the resignation, retirement, death or removal of any such director.

**(B) Common Directors.** The holders of Common Stock, voting together as a separate class, shall be entitled to elect two (2) members of the Board of Directors (individually, a "*Common Director*" and together, the "*Common Directors*") at each meeting or pursuant to a written consent of the Company's shareholders for the election of directors. At any time and from time to time, acting by written consent or pursuant to a shareholder vote, the holders of Common Stock, voting together as a separate class, shall be entitled to remove from office any Common Director, with or without cause, and fill any vacancy caused by the resignation, retirement, death or removal of any Common Director.

**(C) Joint Directors.** So long as any shares of Preferred Stock are outstanding, the holders of Preferred Stock and the holders of Common Stock, by a vote of the holders of at least a majority of the Preferred Stock and Common Stock then outstanding, voting together as one (1) single class, shall be entitled to jointly elect two (2) members of the Board of Directors (individually, a "*Joint Director*" and together, the "*Joint Directors*") at each meeting or pursuant to a written consent of the Company's shareholders for the election of directors and, at any time and from time to time, acting by written consent or pursuant to a shareholder vote, to remove from office any Joint Director, with or without cause, and fill any vacancy caused by the resignation, retirement, death or removal of any Joint Director.

**(D) Election of Directors; Duration of Term.** At any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders of a majority of the shares of Preferred Stock then outstanding shall constitute a quorum of the Preferred Stock for the election of the Preferred Stock Directors. At any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders of a majority of the shares of Common Stock then outstanding shall constitute a quorum of the Common Stock for the election of the Common Directors. At any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders of a majority of the shares of the Preferred Stock and Common Stock then outstanding shall constitute a quorum for the election of the Joint Directors. Elections of directors need not be by written ballot. A director shall hold office until the succeeding annual meeting (or special meeting in lieu thereof) and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office.

**(E) Meetings of the Board of Directors.** The Board of Directors shall hold regular monthly meetings until such time as the Board of Directors unanimously votes to change the frequency of such meetings.

### 3. LIQUIDATION RIGHTS.

**(a)** Upon any Liquidation Event, before any distribution or payment shall be made to the holders of any stock ranking junior in liquidation rights to the Preferred Stock (including, without limitation, the Common Stock and any other class or series of common stock of the Company), and in preference of any such distribution or payment, each holder of

Preferred Stock shall be entitled to be paid, for each share of Preferred Stock held by such holder, the sum of (A) one (1) multiplied by the Series A Original Issue Price, the Series B Original Issue Price or the Series C Original Issue Price (as applicable), as each such issue price may be adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof, plus all accrued but unpaid dividends thereon (whether or not paid) (the "**Liquidation Preference**") and (B) the amount which would have been received by the holders of Series A Preferred, Series B Preferred and the Series C Preferred if they had converted to Common Stock prior to the Liquidation Event and shared pro rata in the assets of the Company (or the consideration in any transaction deemed hereunder to be a Liquidation Event) remaining after payment of the full Liquidation Preference. If, upon a Liquidation Event, the consideration received by the Company shall be insufficient to make payment in full to all holders of Preferred Stock of the Liquidation Preference payable to such stockholder, then such assets (or such consideration) shall be distributed among the holders of Preferred Stock at the time outstanding, pari passu and ratably in proportion to the full amounts to which such stockholders would otherwise be respectively entitled.

(b) The following events shall be deemed to be a Liquidation Event for purposes of this Section 3:

(i) Any "**Acquisition**," which shall mean (A) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the shareholders of the Company immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the voting power of the surviving entity immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions to which the Company is a party in which in excess of fifty percent (50%) of the Company's voting power is transferred, excluding any consolidation or merger effected exclusively to change the domicile of the Company; or (C) any sale, transfer or disposition of more than fifty percent (50%) of the capital stock of the Company; or

(ii) Any "**Asset Transfer**," which shall mean a sale, lease, license or other disposition of all or substantially all of the assets of the Company.

In any of such events in Section 3(b)(i) or (ii) above, if the consideration received by Company is other than cash, its value will be deemed its fair market value as mutually determined in good faith by the Board of Directors and the holders of at least a majority of the Preferred Stock. Notwithstanding the foregoing sentence, in any of such events in Section 3(b)(i) or (ii) above, if the non-cash consideration received by the Company consists of any securities, such securities shall be valued as follows:

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

(1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of

the securities on such quotation system over the twenty (20) trading day period ending three (3) trading days prior to the closing of the transaction deemed hereunder to be a Liquidation Event;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the twenty (20) trading day period ending three (3) trading days prior to the closing of the transaction deemed hereunder to be a Liquidation Event; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined in good faith by the Board of Directors and the holders of at least a majority of the Preferred Stock.

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

(c) Written notice of any Liquidation Event under this Section 3, stating a payment date (which shall be no later than five (5) calendar days after the effective date of such Liquidation Event) and the amount payable with respect to each share of Preferred Stock together with the aggregate amount payable to each holder and to all holders of shares of Preferred Stock and the place where such payments shall be made, shall be delivered not less than twenty (20) calendar days prior to the payment date stated therein, to the holders of record of Preferred Stock; provided, that, in the case of a Liquidation Event described in Section 3(b)(i) or (ii), the payment date shall be the closing date of the Acquisition or Asset Transfer, as the case may be.

#### 4. CONVERSION RIGHTS.

The holders of the Preferred Stock shall have the following conversion rights (the "*Conversion Rights*"):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 4, any share or shares of Preferred Stock may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Preferred Stock shall be entitled upon conversion thereof shall, with respect to the Series A Preferred, be the product obtained by multiplying the "Series A Preferred Conversion Rate" then in effect (determined as provided in Section 4(b)) by the number of shares of Series A Preferred being converted, with respect to the Series B Preferred, shall be the product obtained by multiplying the "Series B Preferred Conversion Rate" then in effect (determined as provided in Section 4(b)) by the number of shares of Series B Preferred being converted, and with respect to the Series C Preferred shall be the product obtained by multiplying the "Series C Conversion Rate" then in effect (determined as provided in Section 4(b)) by the number of shares of Series C Preferred being converted.

(b) **Preferred Stock Conversion Rate.** The conversion rate in effect at any time for conversion of the Series A Preferred (the “*Series A Preferred Conversion Rate*”) shall be the quotient obtained by dividing the Series A Original Issue Price, plus any accrued but unpaid dividends thereon (whether or not declared) computed as of the date of conversion, by the “Series A Preferred Conversion Price,” calculated as provided in Section 4(c). The conversion rate in effect at any time for conversion of the Series B Preferred (the “*Series B Preferred Conversion Rate*”) shall be the quotient obtained by dividing the Series B Original Issue Price, plus any accrued but unpaid dividends thereon (whether or not declared) computed as of the date of conversion, by the “Series B Preferred Conversion Price” calculated as provided in Section 4(c). The conversion rate in effect at any time for conversion of the Series C Preferred (the “*Series C Preferred Conversion Rate*”) shall be the quotient obtained by dividing the Series C Original Issue Price, plus any accrued but unpaid dividends thereon (whether or not declared) computed as of the date of conversion, by the “Series C Preferred Conversion Price” calculated as provided in Section 4(c). Any dividends that are included in the computations set forth above shall be deemed paid by the Company and the Company shall have no further liability therefor upon conversion of the Preferred Stock.

(c) **Preferred Stock Conversion Price.** The conversion price for the Series A Preferred shall initially be the Series A Original Issue Price (the “*Series A Preferred Conversion Price*”), the conversion price for the Series B Preferred shall initially be the Series B Original Issue Price (the “*Series B Preferred Conversion Price*”) and the conversion price for the Series C Preferred shall initially be the Series C Original Issue Price (the “*Series C Preferred Conversion Price*”). Such initial Series A Preferred Conversion Price, Series B Preferred Conversion Price and Series C Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 4. All references to the Series A Preferred Conversion Price herein shall mean the Series A Preferred Conversion Price as so adjusted, all references to the Series B Preferred Conversion Price herein shall mean the Series B Preferred Conversion Price as so adjusted and all references to the Series C Preferred Conversion Price herein shall mean the Series C Preferred Conversion Price as so adjusted.

(d) **Mechanics of Conversion.** Each holder of a share or shares of Preferred Stock who desires to convert the same into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, or provide notification that such certificate or certificates have been lost, stolen or destroyed and execute and deliver an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificate or certificates, in each case at the office of the Company or any transfer agent for the Preferred Stock, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Preferred Stock being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder, registered in such name or names as such holder may direct, a certificate or certificates for the number of shares of Common Stock issuable upon the conversion of such share or shares and shall promptly pay (i) any accrued but unpaid dividends on the shares of Series Preferred being converted as set forth in Section 1(a) above (unless included in Section 4(b) above) and (ii) in cash (at the Common Stock’s fair market value as determined in good faith by the Board of Directors as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to such holder. Such conversion shall

be deemed to have been made at the close of business on the date of such surrender of the certificates representing the share or shares of Preferred Stock to be converted, and the person in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(e) **Adjustment for Stock Splits and Combinations.** If at any time or from time to time after April 28, 2004 (the "*Effective Date*") the Company effects a subdivision of the outstanding shares of Common Stock into a greater number of shares without a corresponding subdivision of the Preferred Stock, the Series A Preferred Conversion Price, Series B Preferred Conversion Price and the Series C Preferred Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Effective Date the Company combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Preferred Stock, the Series A Preferred Conversion Price, the Series B Preferred Conversion Price and the Series C Preferred Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) **Adjustment for Common Stock Dividends and Distributions.** If at any time or from time to time after the Effective Date the Company pays a dividend or other distribution in additional shares of Common Stock, the Series A Preferred Conversion Price, the Series B Preferred Conversion Price and the Series C Preferred Conversion Price that is then in effect shall be decreased as of the time of such issuance, as provided below:

(i) The Series A Preferred Conversion Price, the Series B Preferred Conversion Price and the Series C Preferred Conversion Price (as applicable) shall be reduced by an amount equal to the product of (x) the Series A Preferred Conversion Price, the Series B Preferred Conversion Price or the Series C Preferred Conversion Price (as applicable) then in effect and (y) a fraction equal to:

(A) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and

(B) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

(ii) If the Company fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the Series A Preferred Conversion Price, the Series B Preferred Conversion Price and the Series C Preferred Conversion Price shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date; and

(iii) If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Preferred Conversion, the Series B Preferred Conversion Price and the Series C Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Preferred Conversion Price, the Series B Preferred Conversion Price and the Series C Preferred Conversion Price shall be reduced pursuant to this Section 4(f) to reflect the actual payment of such dividend or distribution.

(g) **Adjustment for Reclassification, Exchange and Substitution.** If at any time or from time to time after the Effective Date, the Common Stock is changed into the same or a different number of shares of any series, class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer as defined in Section 3 or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4), in any such event each holder of Preferred Stock shall then have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(h) **Reorganizations, Mergers or Consolidations.** If at any time or from time to time after the Effective Date, there is a capital reorganization of the Common Stock or the merger or consolidation of the Company with or into another corporation or another entity or person (other than an Acquisition or Asset Transfer as defined in Section 3 or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4), as a part of such capital reorganization, merger or consolidation, provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion of such Preferred Stock would have been entitled upon such capital reorganization, merger or consolidation, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Preferred Stock after such capital reorganization, merger or consolidation to the end that the provisions of this Section 4 (including adjustment of the Series A Preferred Conversion Price, the Series B Preferred Conversion Price and the Series C Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(i) **Sale of Shares Below Conversion Price.**

(i) (A) If at any time or from time to time during the eighteen (18) month period immediately following the Effective Date, the Company issues or sells, or is deemed by the express provisions of this Section 4(i) to have issued or sold (each, a



**“Subsequent Issuance”**), “Additional Shares of Common Stock” (as defined below), other than as a dividend or other distribution on any class of stock as provided in Section 4(f) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4(e) above, for an “Effective Price” (as defined below) less than the then-effective Series A Preferred Conversion Price, the then-effective Series B Preferred Conversion Price and/or the then-effective Series C Preferred Conversion Price (as applicable), then and in each such case, the then-effective Series A Preferred Conversion Price, the then-effective Series B Preferred Conversion Price and/or the then-effective Series C Preferred Conversion Price (as applicable) shall be reduced, as of the opening of business on the date of such issue or sale (or deemed issuance or sale), to the Effective Price (a **“Full Ratchet Dilution Adjustment”**).

(B) If at any time or from time to time after the expiration of the eighteen (18) month period immediately following the Effective Date there is a Subsequent Issuance by the Company of Additional Shares of Common Stock, other than as a dividend or other distribution on any class of stock as provided in Section 4(f) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4(e) above, for an Effective Price less than the then-effective Series A Preferred Conversion Price, the then-effective Series B Preferred Conversion Price or the then-effective Series C Preferred Conversion Price (as applicable), then and in each such case the then-effective Series A Preferred Conversion Price, the then-effective Series B Preferred Conversion Price or the then-effective Series C Preferred Conversion Price (as applicable) shall be reduced, as of the opening of business on the date of such issue or sale (or deemed issuance or sale), to a price determined by multiplying the then-effective Series A Preferred Conversion Price, the then-effective Series B Preferred Conversion Price or the then-effective Series C Preferred Conversion Price (as applicable) by a fraction (i) the numerator of which shall be the sum of the shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus the number of shares of Common Stock which the Aggregate Consideration (as defined in Section (i)(iv) below) received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at the then-effective Series A Preferred Conversion Price, the then-effective Series B Preferred Conversion Price or the then-effective Series C Preferred Conversion Price (as applicable) and (ii) the denominator of which shall be the sum of the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus the total number of Additional Shares of Common Stock so issued (a **“Weighted Average Dilution Adjustment”**). For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding and (B) the number of shares of Common Stock into which the then outstanding shares of Preferred Stock could be converted if fully converted on the day immediately preceding the given date.

(C) Notwithstanding Sections 4(i)(i)(A) and (B) above, if the holders of at least sixty-six and two-thirds percent (66 2/3%) of the Preferred Stock have exercised preemptive or similar rights to acquire their proportionate share of the Additional Shares of Common Stock offered by the Company in a Subsequent Issuance (as such preemptive or similar right is then set forth in a written agreement among the holders of Preferred Stock and the Company), then the Series A Preferred Conversion Price, the Series B Conversion Price

and/or the Series C Conversion Price (as applicable) for the shares of Series A Preferred, Series B Preferred and/or Series C Preferred (as applicable) then held by each holder of Preferred Stock holding at least one million (1,000,000) shares of Preferred Stock (as adjusted for stock splits, dividends, recapitalizations and the like after the filing date hereof) (including for such purposes all shares held by affiliated investment funds of such holder) that did not fully exercise such preemptive or similar right in connection with such Subsequent Issuance shall not be subject to the Full Ratchet Dilution Adjustment or the Weighted Average Dilution Adjustment (as applicable) pursuant to Sections 4(i)(i)(A) or (B) above. For purposes of the previous sentence, the Series A Preferred Conversion Price, the Series B Conversion Price and/or the Series C Conversion Price (as applicable) shall be determined on a share-by-share basis taking into account any Full Ratchet Dilution Adjustment or the Weighted Average Dilution Adjustment (as applicable) which is not permitted with respect to such share as a result of the application of the preceding sentence. Notwithstanding anything herein to the contrary, the holders of at least a majority of the Preferred Stock may waive the Full Ratchet Dilution Adjustment or the Weighted Average Dilution Adjustment (as applicable) with respect to all of the shares of Preferred Stock, either prospectively or retroactively or either generally or in a particular instance, by a writing executed by such holders and any such waiver shall be binding on all future holders of the Preferred Stock for which such rights have been waived.

(ii) (A) For the purpose of the adjustment required under this Section 4(i), if the Company issues or sells (x) stock or other securities convertible into Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "*Convertible Securities*") or (y) rights, warrants or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the Series A Preferred Conversion Price, the Series B Preferred Conversion Price and/or the Series C Preferred Conversion Price (as applicable), in each case the Company shall be deemed to have issued at the time of the issuance of such rights, warrants or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights, warrants or options or Convertible Securities plus:

(1) in the case of such rights, warrants or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights, warrants or options; and

(2) in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company upon the conversion thereof (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities); *provided*, that if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses.

(B) If the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, warrants, options or Convertible

Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced (and the Series A Preferred Conversion Price, the Series B Preferred Conversion Price and/or the Series C Preferred Conversion Price (as applicable) shall be recalculated pursuant to Section 4(i)(i)(A) and/or (B) above); *provided, however*, that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, warrants, options or Convertible Securities (and the Series A Preferred Conversion Price, the Series B Preferred Conversion Price and/or the Series C Preferred Conversion Price (as applicable) shall be increased pursuant to Section 4(i)(i)(A) and/or (B) above as applicable); *provided, further* that no such recalculation shall apply to prior conversions of Preferred Stock or result in any increase in the Series A Preferred Conversion Price, the Series B Preferred Conversion Price and/or the Series C Preferred Conversion Price (as applicable) above the Series A Preferred Conversion Price, the Series B Preferred Conversion Price and/or the Series C Preferred Conversion Price (as applicable) that would have been in effect had such rights, options or Convertible Securities not been issued or sold.

(C) No further adjustment of the Series A Preferred Conversion Price, the Series B Preferred Conversion Price and/or the Series C Preferred Conversion Price (as applicable), as adjusted upon the issuance of such rights, warrants, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock or the exercise of any such rights, warrants or options or the conversion of any such Convertible Securities. If any such rights, warrants or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series A Preferred Conversion Price, the Series B Preferred Conversion Price and/or the Series C Preferred Conversion Price (as applicable) as adjusted upon the issuance of such rights, warrants, options or Convertible Securities shall be readjusted to the Series A Preferred Conversion Price, the Series B Preferred Conversion Price and/or the Series C Preferred Conversion Price (as applicable) which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights, warrants or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights, warrants or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, *provided* that no such readjustment shall apply to prior conversions of Preferred Stock.

(iii) For the purpose of making any adjustment to the Conversion Price of the Series A Preferred, the Series B Preferred and or the Series C Preferred (as applicable) required under this Section 4(i), "*Additional Shares of Common Stock*" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to

this Section 4(i) (including, without limitation, shares of Common Stock subsequently reacquired or retired by the Company), other than:

(A) shares of Common Stock issued upon conversion of the Preferred Stock;

(B) up to 37,110,601 shares of Common Stock and/or options, and the Common Stock issued pursuant to such options (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof), issued before or after the Effective Date to directors, officers or employees of, or consultants to, the Company pursuant to such arrangements, contracts or plans as are recommended by management of the Company and approved by the Board of Directors;

(C) up to Four Hundred Fifty-Nine Thousand Nine Hundred Twenty Five (459,925) shares of Common Stock issued pursuant to the exercise of warrants outstanding as of the Effective Date; and

(D) shares of Common Stock issued in connection with lease financing transactions, strategic alliances or corporate partnering agreements (in each case as approved by the Board of Directors and the holders of at least a majority of the Preferred Stock).

(iv) References to Common Stock in the subsections of this Section (i) above shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(i). The "*Effective Price*" of Additional Shares of Common Stock shall mean the quotient determined by dividing (x) the "*Aggregate Consideration*" (as defined below) received, or deemed to have been received, by the Company for such issue under this Section 4(i), for such Additional Shares of Common Stock by (y) the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold, by the Company under this Section 4(i). For the purpose of making any adjustment required under this Section 4(i), the aggregate consideration received by the Company for any issue or sale of securities (the "*Aggregate Consideration*") shall be defined as: (A) to the extent it consists of cash, the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, the fair value of such property as mutually determined in good faith by the Board of Directors and the holders of at least a majority of the Preferred Stock, and (C) if Additional Shares of Common Stock, "Convertible Securities" (as defined above) or rights, warrants or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, the portion of the consideration so received that may be mutually determined in good faith by the Board of Directors and the holders of at least a majority of the Preferred Stock to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights, warrants or options.

**(j) Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series A Preferred Conversion Price, the Series B Preferred Conversion Price and/or the Series C Preferred Conversion Price (as applicable), the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall deliver such certificate to each registered holder of Series A Preferred, Series B Preferred and/or Series C Preferred (as applicable) at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the method upon which the calculation of such adjustment or readjustment is based and the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Series A Preferred Conversion Price, the Series B Preferred Conversion Price and/or the Series C Preferred Conversion Price (as applicable) at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series A Preferred, the Series B Preferred and/or the Series C Preferred (as applicable).

**(k) Notices of Record Date.** In connection with (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer, or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall deliver to each holder of Preferred Stock at least twenty (20) days prior to the record date (or the date on which the books of the Company shall close) specified therein a written notice specifying (A) the date on which any such record is to be taken (or the books of the Company shall be so closed) for the purpose of determining rights to receive such dividend or distribution (and including therein a description of such dividend or distribution) or for the purpose of determining rights to vote in respect of any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up (as the case may be), (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

**(l) Automatic Conversion.**

**(1)** Each share of Preferred Stock shall automatically be converted into shares of Common Stock, based on the then-effective Series A Preferred Conversion Price, Series B Preferred Conversion Price or Series C Preferred Conversion Price (as applicable), (1) at any time upon the affirmative election of the holders of at least eighty percent (80%) of the outstanding shares of the Preferred Stock or (2) immediately upon either (a) the closing of a firm-commitment underwritten public offering by an underwriter pursuant to an

effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least ten (10) times the Series C Original Issue Price (as adjusted for stock splits, dividends, recapitalizations and the like after the filing date hereof), and (ii) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least \$30,000,000 or (b) the placing and admission of Common Stock for the account of the Company on the Alternative Investment Market of the London Stock Exchange (each of items (a) and (b) herein, a “*Qualified Initial Public Offering*”).

(ii) Upon the occurrence of any event specified in Section 4(l)(i) above, each of the outstanding shares of Preferred Stock subject to conversion upon the occurrence of such event pursuant to Section 4(l)(i) above shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; *provided, however*, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the shares of Preferred Stock subject to such conversion, the holders of such shares of Preferred Stock shall surrender the certificates representing such shares (or deliver an executed indemnification agreement as contemplated by the foregoing sentence) at the office of the Company or any transfer agent for the Preferred Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.

(m) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash in accordance with the provisions of Section 4(d) above.

(n) **Reservation of Stock Issuable Upon Conversion.** The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(o) **Notices.** Notwithstanding anything herein to the contrary, any notice required by the provisions of Section 3 or this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iii) one (1) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

(p) **Payment of Taxes.** The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Preferred Stock, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered.

(q) **No Dilution or Impairment.** Without the consent of the holders of then outstanding Preferred Stock as required under Section 2(b), the Company shall not amend its Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against dilution or other impairment.

## 5. REDEMPTION.

(a) **Redemption Event.** At any time on or after June 23, 2008, upon the request in writing of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the Preferred Stock (a "*Redemption Request*"), the Company shall redeem all outstanding shares of Preferred Stock in accordance with in this Section 5. The Company shall redeem thirty-three and one-third percent (33 1/3%) of all the shares of Preferred Stock outstanding on the "Initial Redemption Date" (as defined below), fifty percent (50%) of all the shares of Preferred Stock outstanding on the first anniversary of the Initial Redemption Date, and one hundred percent (100%) of all the shares of Preferred Stock outstanding on the second anniversary of the Initial Redemption Date (each such date, a "*Redemption Date*").

(b) **Redemption Price.** The shares of Preferred Stock shall be redeemed by paying for each share in cash, subject to Section 5(c) below, an amount equal to the greater of (i) in the case of the Series A Preferred, the Series A Original Issue Price, plus all dividends accrued but unpaid thereon (whether or not declared) as of the date of the "Redemption Notice" (as defined below), in the case of the Series B Preferred, the Series B Original Issue Price, plus all dividends accrued but unpaid thereon (whether or not declared) as of the date of the Redemption Notice, in the case of the Series C Preferred, the Series C Original Issue Price, plus all dividends accrued but unpaid thereon (whether or not declared) as of the date of the Redemption Notice, (ii) the "Per Share Cash Flow Value" (as defined below) of each share of the

Preferred Stock; or (iii) the fair market value of each share of the Preferred Stock determined in accordance with the appraisal procedure set forth in Section 5(e) below. The amount payable under this Section 5 upon a redemption in respect of each share of Preferred Stock is referred to as the "**Redemption Price**." For purposes of this Section 5, the "**Per Share Cash Flow Value**" shall mean the per share amount that would be received by the holders of Preferred Stock under Sections 3(a) hereof in the event of a Sale Liquidation Event, if the net proceeds received by the Company from such Sale Liquidation Event and available for distribution to the stockholders of the Company were equal to eight (8) times the EBITDA of the Company for the most recent fiscal year of the Company ending prior to the date of the Redemption Notice, as determined on the basis of the audited financial statements of the Company for such fiscal year.

(c) **Determination of Redemption Price.** No later than ten (10) calendar days following the date of a Redemption Request, the Company shall deliver written notice (the "**Redemption Notice**") to each holder of record (at the close of business on the business day next preceding the day on which the Redemption Notice is given) of shares of Preferred Stock, notifying such holder of the redemption and specifying (i) the Series A Original Issue Price, the Series B Original Issue Price and the Series C Original Issue Price, plus in each such case all dividends accrued but unpaid thereon (whether or not declared) as of the date of the Redemption Notice and (ii) the Per Share Cash Flow Value of each share of the Preferred Stock (which shall be calculated by the Company's independent certified public accountant in accordance with generally accepted accounting principles consistently applied and which shall be binding upon the Company for all purposes), to establish the applicable Redemption Price pursuant to clause (i) and (ii) of Section 5(b) above. In the event that, within twenty (20) calendar days following the Redemption Notice, the holders of a majority of the shares of Preferred Stock then outstanding request that an appraisal be performed to determine the fair market value of the Preferred Stock for purposes of clause (iii) of Section 5(b) above, then such an appraisal will be performed in accordance with Section 5(e) below and the applicable Redemption Price then shall be the greater of the amounts determined in accordance with clause (i), (ii) and (iii) of Section 5(b) above. In the event that the holders of a majority of the outstanding shares of Preferred Stock do not request such an appraisal within such twenty (20)-day period, the applicable Redemption Price shall be the greater of the amounts set forth in clause (i) and (ii) of Section 5(b) above.

(d) **Redemption Mechanics.** No later than five (5) business days following (i) the determination of the fair market value of the Preferred Stock pursuant to Section 5(e) below or (ii) in the event that no appraisal is performed, the expiration of the twenty (20)-day period provided for the request of an appraisal pursuant to Section 5(c) above, the Company shall deliver written notice (the "**Final Redemption Notice**") to each holder of record of shares of Preferred Stock notifying such holder of the Redemption Price, the date of the initial redemption (the "**Initial Redemption Date**"), which shall be selected by the Company but shall in no event be more than ten (10) calendar days following the date of the Final Redemption Notice, and the place at which the Redemption Price is payable. In addition, no later than ten (10) days prior to any Redemption Date (other than the Initial Redemption Date), the Company shall deliver written notice (each such notice, a "**Subsequent Redemption Notice**") to each holder of record of shares of Preferred Stock, notifying such holder of the date of such



Redemption Date and the place at which the Redemption Price with respect to such Redemption Date is payable.

If the funds of the Company legally available for redemption of shares of Preferred Stock are insufficient to redeem the total number of shares of Preferred Stock then outstanding and subject to redemption hereunder (including an insufficiency based on the fact that payment of the Redemption Price would cause the Company to file for bankruptcy protection or default on any outstanding debt or obligation, including any dividend payment), the holders of such shares shall share ratably and on a pari passu basis in any funds legally available for redemption of such shares according to the respective amounts which would be payable to them if the full number of shares subject to redemption were actually redeemed. The shares of Preferred Stock required to be redeemed but not so redeemed shall remain outstanding and shall continue to be entitled to all rights and preferences provided herein, and the Company shall be deemed to be in default of its obligations hereunder. At any time thereafter whenever additional funds of the Company are legally available for the redemption of such shares of Preferred Stock, such funds will first be used, as soon as legally permitted, to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above.

**(e) Appraisal Procedure.** In the event that the holders of a majority of the outstanding shares of Preferred Stock request that an appraisal be performed to determine the per share fair market value of such shares of Preferred Stock for purposes of determining the applicable Redemption Price, the Company, within five (5) calendar days following the request for appraisal by the requisite majority of such holders, shall so notify all holders of shares of Preferred Stock then outstanding. Within fifteen (15) calendar days following the Company's notice to the holders of Preferred Stock pursuant to the preceding sentence, the Company, on the one hand, and the holders at least a majority of the Preferred Stock, on the other hand, each shall appoint an appraiser and such two (2) appraisers shall determine mutually the per share fair market value of the Preferred Stock; *provided, however*, that in the event that the Company or the holders of Preferred Stock should fail to appoint an appraiser, the appraiser appointed by the other party, acting alone, shall determine the fair market value of the Preferred Stock. If such two (2) appraisers agree upon the fair market value of the Preferred Stock, they shall jointly render a single written report of their opinion thereon. If the appraisers do not agree and the higher of the two (2) appraisals is not more than fifteen percent (15%) greater than the lower of the two (2) appraisals, the fair market value shall be the average of the two (2) appraisals. If the appraisers do not agree and the higher of the two (2) appraisals is more than fifteen percent (15%) greater than the lower of the two (2) appraisals, the two (2) appraisers shall together appoint a third appraiser to appraise the Preferred Stock and the per share fair market value thereof shall be the average of all three (3) appraisals. All appraisers appointed hereunder shall be qualified by experience and ability to appraise the Preferred Stock. The fees and other costs of each of the first two (2) appraisers shall be borne by the party appointing such appraiser and the fees and other costs of the third appraiser shall be borne equally by the Company and the holders of Preferred Stock. Any appraiser making an appraisal pursuant to this Section 5(e) shall assume an all cash sale with respect to the shares of Series A Preferred (and take into account any accrued dividends and the Liquidation Preference for the Series A Preferred and the Series B Preferred) and shall assume that such stock is not subject to any contractual transfer restrictions

or restrictions pursuant to any securities laws. The appraisers shall endeavor to deliver their final written report to the Company and the holders of Preferred Stock within thirty (30) days after being engaged and the Company shall timely cooperate with such appraisers and provide such appraisers with any materials or information as such appraisers may request.

**(f) Redeemed or Otherwise Acquired Shares to be Retired.** Any shares of Preferred Stock redeemed pursuant to this Section 5 or otherwise acquired by the Company in any manner whatsoever shall be canceled and shall not under any circumstances be reissued; and the Company may from time to time take such appropriate corporate action as may be necessary to reduce accordingly the number of authorized shares of Preferred Stock. Notwithstanding anything herein to the contrary, the redemption rights set forth in this Section 5 shall expire upon a Qualified Initial Public Offering.

## **6. EVENTS OF NON-COMPLIANCE.**

**(a)** Upon the occurrence of any “Event of Non-Compliance” (as herein defined):

**(i)** In addition to any dividends otherwise payable on the Preferred Stock hereunder, from and after the date of such Event of Non-Compliance, additional dividends shall accrue and shall be payable quarterly in cash by the Company with respect to the Preferred Stock at the rate of twelve percent (12%) per annum on the Series A Original Issue Price, the Series B Original Issue Price or the Series C Original Issue Price (as applicable) (as adjusted for any stock dividends, combinations, splits, recapitalizations or the like) until such Event of Non-Compliance is cured by the Company or waived by the holders of at least a majority of the Preferred Stock, in their sole discretion; provided, however, that any holder of Preferred Stock shall have the right, at such holder’s option exercisable at any time, to convert any such accrued and unpaid dividends into shares of Common Stock at the Series A Preferred Conversion Rate, the Series B Preferred Conversion Rate or the Series C Original Issue Price (as applicable); and

**(ii)** If the holders of Preferred Stock do not have the right to elect a majority of the members of the Board of Directors, notwithstanding anything herein to the contrary, the holders of Preferred Stock shall automatically have such right until such Event of Non-Compliance has been cured by the Company or waived by the holders of at least a majority of the Preferred Stock, in their sole discretion, to elect additional directors (the “*Provisional Directors*”) such that the aggregate number of directors elected by the holders of the Preferred Stock pursuant to this Section 6(a)(ii) shall constitute a majority of the Board of Directors and upon such cure or waiver the composition of the Board of Directors shall revert back to its composition prior to the occurrence of such Event of Non-Compliance; provided, however, that nothing in this Section 6(a)(ii) shall restrict or eliminate the rights of the holders of outstanding Common Stock to designate the number of directors specified in Section 2(c), above; and

**(iii)** The Company shall immediately execute and deliver to the holders of the Preferred Stock an assignment of intellectual property rights and such other documents and instruments as are necessary, in form and substance acceptable to the holders of

the Preferred Stock, to cause a complete and full assignment and transfer of all rights to the Company's technology and intellectual property to the holders of the Preferred Stock; provided, however, that upon the cure by the Company of such Event of Non-Compliance or the waiver thereof by the holders of at least a majority of the Preferred Stock, such technology and intellectual property rights shall be reassigned to the Company.

The foregoing remedies in this Section 6(a) are in addition to any other rights and remedies hereunder or in a Stock Purchase Agreement among the Company and the holders of Series A Preferred, the Series B Preferred and/or the Series C Preferred (each, a "*Stock Purchase Agreement*") or under applicable law, are cumulative, are not exclusive and all remedies at law and equity are reserved.

(b) An Event of Non-Compliance will occur upon any of the following:

(i) The Company breaches any of its representations, warranties, covenants or other agreements in any Stock Purchase Agreement or any "Related Agreement" (as defined in any Stock Purchase Agreement) and fails to cure such breach within thirty (30) days of notice thereof; or

(ii) The Company fails to timely make any mandatory redemption or to pay any dividend or other distribution with respect to the Preferred Stock as required hereunder; or

(iii) The Company defaults on any loan agreement where the outstanding balance (principal, interest and costs and fees) exceeds \$250,000 (a "*Material Loan*"), and such default shall not have been cured or waived in accordance with the applicable loan documents; or

(iv) The Company files for bankruptcy, makes an assignment for the benefit of creditors, or otherwise files a petition commencing a case or proceeding under any insolvency or similar laws (or if such a petition is filed against the Company), breaches any agreement related to any Material Loan or suffers acceleration of amounts due under a Material Loan, or if a receiver, trustee or custodian is appointed with respect to all or any portion of the Company's assets.

7. **PREEMPTIVE RIGHTS.** The holders of Preferred Stock shall be entitled to preemptive rights as set forth in a written agreement among the Company and holders of Preferred Stock.

### ARTICLE III Corporate Purpose

The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law, as the same exists or as may hereafter be amended from time to time.

**ARTICLE IV**  
**Amendment to Certificate of Incorporation and Bylaws**

Subject to Article II.D.2(b)(i) hereof, the shareholders of the Company shall have the power to adopt, amend or repeal this Certificate of Incorporation and to adopt, amend or repeal the Bylaws of the Company by the affirmative vote of the holders of a majority of the then outstanding shares of Common Stock and the holders of a majority of the then outstanding shares of Preferred Stock (on an as-if-converted basis), voting together as one (1) single class.

**ARTICLE V**  
**Indemnification and Liability Limitation Provisions**

To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, no director of the Company shall be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director.

The Company shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he or she or his or her testator or intestate is or was a director or officer of the Company or any predecessor of the Company or serves or served any other enterprise as a director or officer at the request of the Company or any predecessor to the Company.

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

**ARTICLE VI**  
**Registered Agent**

The address of the Company's registered office in the State of Delaware is 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.