

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM433147

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	CHANGE OF NAME		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Digital Comply, Inc.		04/19/2016	Corporation: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Venminder, Inc.		
<b>Street Address:</b>	2935 Dolphin Drive		
<b>Internal Address:</b>	Suite 205		
<b>City:</b>	Elizabethtown		
<b>State/Country:</b>	KENTUCKY		
<b>Postal Code:</b>	42701		
<b>Entity Type:</b>	Corporation: DELAWARE		
<b>PROPERTY NUMBERS Total: 2</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	4558802	D DIGITAL COMPLIANCE	
<b>Registration Number:</b>	4530655	VENMINDER	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	5026278717		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	502-560-4217		
<b>Email:</b>	trademarks@skofirm.com		
<b>Correspondent Name:</b>	Laura H. Pulliam		
<b>Address Line 1:</b>	500 W Jefferson St		
<b>Address Line 2:</b>	2000 PNC Plaza		
<b>Address Line 4:</b>	Louisville, KENTUCKY 40202		
<b>NAME OF SUBMITTER:</b>	Laura H. Pulliam		
<b>SIGNATURE:</b>	/Laura H. Pulliam/		
<b>DATE SIGNED:</b>	06/29/2017		
<b>Total Attachments: 30</b>			
source=LOUISVILLE-#1344068-v1-Digital_Comply_-_Filed_6th_A&R_Cert_of_Inc_(name_change_Venminder__Inc_)#p			
source=LOUISVILLE-#1344068-v1-Digital_Comply_-_Filed_6th_A&R_Cert_of_Inc_(name_change_Venminder__Inc_)#p			
source=LOUISVILLE-#1344068-v1-Digital_Comply_-_Filed_6th_A&R_Cert_of_Inc_(name_change_Venminder__Inc_)#p			

CH \$65.00 4558802



# Delaware

The First State

Page 1

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "DIGITAL COMPLY, INC.", CHANGING ITS NAME FROM "DIGITAL COMPLY, INC." TO "VENMINDER, INC.", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF APRIL, A.D. 2016, AT 12:34 O`CLOCK P.M.*

*A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.*



*Jeffrey W. Bullock*  
Jeffrey W. Bullock, Secretary of State

5010464 8100  
SR# 20162392923

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 202178707  
Date: 04-20-16

TRADEMARK  
REEL: 006094 FRAME: 0431

(Pursuant to Sections 242 and 245 of the  
General Corporation Law of the State of Delaware)

Digital Comply, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"),

**DOES HEREBY CERTIFY:**

**1):** That the name of this corporation is Digital Comply, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on March 30, 2012, under the name Digital Comply, Inc. As set forth in Article First below, the name of the corporation is hereby changed to Venminder, Inc.

**2):** That the Board of Directors duly adopted resolutions proposing to amend and restate the Fifth Amended and Restated Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

**RESOLVED**, that the Fifth Amended and Restated Certificate of Incorporation of this corporation be amended and restated in its entirety to read as follows:

**FIRST:** The name of this corporation is **Venminder, Inc.** (the "**Corporation**").

**SECOND:** The address of the registered office of the Corporation in the State of Delaware is 850 New Burton Road, Suite 201, Dover, County of Kent, Delaware 19904. The name of its registered agent at such address is National Corporate Research, Ltd.

**THIRD:** The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law (the "**General Corporation Law**").

**FOURTH:** The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) Two Hundred Eighty-Eight Thousand, Forty-Two (288,042) shares of Common Stock, \$0.0001 par value per share ("**Common Stock**"), and (ii) One Hundred Ninety-Seven Thousand, Seven Hundred Five (197,705) shares of Preferred Stock, \$0.0001 par value per share ("**Preferred Stock**"). The Preferred Stock is divided between Thirty Thousand (30,000) shares of Series A Preferred Stock, Thirty-Three Thousand One Hundred Sixty (33,160) shares of Series B Preferred Stock, Seventy-Five Thousand Ninety-Four (75,094) shares of Series B-2 Preferred Stock, and Fifty-Nine Thousand, Four Hundred Fifty-One (59,451) shares of Series B-3 Preferred Stock.

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

#### **A. COMMON STOCK**

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of this Sixth Amended and Restated Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

3. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock. No dividend shall be paid on any share of Common Stock (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) unless all accrued and unpaid dividends on the Series A Preferred Stock, the Series B Preferred Stock, the Series B-2 Preferred Stock and the Series B-3 Preferred Stock provided for in Part B of this Article FOURTH (including any dividends which have been added to the Series A Accrued Value (as defined below), the Series B Accrued Value (as defined below)), the Series B-2 Accrued Value (as defined below) and the Series B-3 Accrued Value (as defined below) have been paid in full.

#### **B. PREFERRED STOCK**

Thirty thousand (30,000) shares of the authorized Preferred Stock of the Corporation are hereby designated "**Series A Preferred Stock,**" Thirty-Three Thousand, One Hundred Sixty (33,160) shares of the authorized Preferred Stock of the Corporation are hereby designated "**Series B Preferred Stock,**" Seventy-Five Thousand Ninety-Four (75,094) shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "**Series B-2 Preferred Stock,**" and Fifty-Nine Thousand, Four Hundred Fifty-One (59,451) shares of the authorized and unissued Preferred Stock of the Corporation is hereby designated "**Series B-3 Preferred Stock,**" in each case with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations. Unless otherwise indicated, references to "Sections" or "Subsections" in this Part B of this Article FOURTH refer to sections and subsections of Part B of this Article FOURTH.

1. Dividends.

1.1. The holders of Series A Preferred Stock shall be entitled to receive cumulative cash dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend on shares of Common Stock (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) at the rate of five percent (5%) of the Series A Accrued Value (as defined below) per share of Series A Preferred Stock per annum (the "**Series A Dividend**"), payable only when, as and if declared by the Board of Directors of the Corporation. Dividends on the Series A Preferred Stock shall be cumulative and shall accrue daily from and after, but shall compound annually on each anniversary of, the Series A Original Issue Date (as defined below), whether or not earned or declared, and whether or not there are earnings or profits, surplus or other funds or assets of the Corporation legally available for the payment of dividends. If any accrued dividends have not been paid in cash on or prior to any anniversary of the date of the original issuance of such share, the amount of such accrued dividend shall be added to the Series A Accrued Value, as provided in the definition thereof. The "**Series A Original Issue Price**" shall mean \$33.33333 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock. The "**Series A Accrued Value**" shall mean, with respect to each share of Series A Preferred Stock, the sum, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock, of (i) the Series A Original Issue Price plus (ii) on each anniversary of the date of original issuance of such share an amount equal to any dividends on the Series A Preferred Stock which have accrued on any anniversary of the date of the original issuance of such share that have not been paid on such date.

1.2. The holders of Series B Preferred Stock shall be entitled to receive cumulative cash dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend on shares of Common Stock (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) at the rate of five percent (5%) of the Series B Accrued Value (as defined below) per share of Series B Preferred Stock per annum (the "**Series B Dividend**"), payable only when, as and if declared by the Board of Directors of the Corporation. Dividends on the Series B Preferred Stock shall be cumulative and shall accrue daily from and after, but shall compound annually on each anniversary of, the Series B Original Issue Date (as defined below), whether or not earned or declared, and whether or not there are earnings or profits, surplus or other funds or assets of the Corporation legally available for the payment of dividends. If any accrued dividends have not been paid in cash on or prior to any anniversary of the date of the original issuance of such share, the amount of such accrued dividend shall be added to the Series B Accrued Value, as provided in the definition thereof. The "**Series B Original Issue Price**" shall mean \$39.81 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock. The "**Series B Accrued Value**" shall mean, with respect to each share of Series B Preferred Stock, the sum, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock, of (i) the Series B Original Issue Price plus (ii) on each anniversary of the date of original issuance of such share an

amount equal to any dividends on the Series B Preferred Stock which have accrued on any anniversary of the date of the original issuance of such share that have not been paid on such date.

1.3. The holders of Series B-2 Preferred Stock shall be entitled to receive cumulative cash dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend on shares of Common Stock (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) at the rate of five percent (5%) of the Series B-2 Accrued Value (as defined below) per share of Series B-2 Preferred Stock per annum (the "**Series B-2 Dividend**"), payable only when, as and if declared by the Board of Directors of the Corporation. Dividends on the Series B-2 Preferred Stock shall be cumulative and shall accrue daily from and after, but shall compound annually on each anniversary of, the date of the original issuance of such share, whether or not earned or declared, and whether or not there are earnings or profits, surplus or other funds or assets of the Corporation legally available for the payment of dividends. If any accrued dividends have not been paid in cash on or prior to any anniversary of the date of the original issuance of such share, the amount of such accrued dividend shall be added to the Series B-2 Accrued Value of such share, as provided in the definition thereof. The "**Series B-2 Original Issue Price**" shall mean \$44.46 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B-2 Preferred Stock. The "**Series B-2 Accrued Value**" shall mean, with respect to each share of Series B-2 Preferred Stock, the sum, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B-2 Preferred Stock, of (i) the Series B-2 Original Issue Price plus (ii) on each anniversary of the date of original issuance of such share an amount equal to any dividends on the Series B-2 Preferred Stock which have accrued on any anniversary of the date of the original issuance of such share that have not been paid on such date.

1.4. The holders of Series B-3 Preferred Stock shall be entitled to receive cumulative cash dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend on shares of Common Stock (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) at the rate of five percent (5%) of the Series B-3 Accrued Value (as defined below) per share of Series B-3 Preferred Stock per annum (the "**Series B-3 Dividend**"), payable only when, as and if declared by the Board of Directors of the Corporation. Dividends on the Series B-3 Preferred Stock shall be cumulative and shall accrue daily from and after, but shall compound annually on each anniversary of, the date of the original issuance of such share, whether or not earned or declared, and whether or not there are earnings or profits, surplus or other funds or assets of the Corporation legally available for the payment of dividends. If any accrued dividends have not been paid in cash on or prior to any anniversary of the date of the original issuance of such share, the amount of such accrued dividend shall be added to the Series B-3 Accrued Value of such share, as provided in the definition thereof. The "**Series B-3 Original Issue Price**" shall mean \$67.28 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B-3 Preferred Stock. The "**Series B-3 Accrued Value**" shall mean, with respect to each share of Series B-3 Preferred Stock, the sum, subject to appropriate adjustment in the event of any stock dividend, stock split,

combination or other similar recapitalization with respect to the Series B-3 Preferred Stock, of (i) the Series B-3 Original Issue Price plus (ii) on each anniversary of the date of original issuance of such share an amount equal to any dividends on the Series B-3 Preferred Stock which have accrued on any anniversary of the date of the original issuance of such share that have not been paid on such date.

1.5. In the event that the Board of Directors of the Corporation shall declare a dividend payable upon the then outstanding shares of Common Stock (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation), the holders of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock shall be entitled, in addition to any cumulative dividends to which the Series A Preferred Stock, the Series B Preferred Stock, the Series B-2 Preferred Stock and Series B-3 Preferred Stock may be entitled under Subsection 1.1.1.2, 1.3 or 1.4 above, respectively, to receive the amount of dividends per share of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock that would be payable on the number of whole shares of the Common Stock into which each share of such Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock held by each holder could be converted pursuant to the provisions of Section 4, such number to be determined as of the record date for the determination of holders of Common Stock entitled to receive such dividend.

1.6. The Board of Directors of the Corporation may fix a record date for the determination of holders of Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock or Series B-3 Preferred Stock entitled to receive payment of a dividend declared thereon, which record date shall be no more than 60 days and no less than 10 days prior to the date fixed for the payment thereof.

1.7. Any declaration of a dividend payable to the then outstanding shares of Series B-2 Preferred Stock shall be pari passu as to each Series of Preferred Stock.

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

2.1. Payments to Holders of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the sum of the Series A Accrued Value thereof plus an amount equal to all accrued and unpaid dividends on the Series A Preferred Stock that have not previously been added to the Series A Accrued Value, or (ii) such amount per share as would have been payable had all shares of Series A Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up (the amount payable pursuant to this sentence is hereinafter referred to as the "Series A Liquidation Amount"). In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series B Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before



any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the sum of the Series B Accrued Value thereof plus an amount equal to all accrued and unpaid dividends on the Series B Preferred Stock that have not previously been added to the Series B Accrued Value, or (ii) such amount per share as would have been payable had all shares of Series B Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up (the amount payable pursuant to this sentence is hereinafter referred to as the "**Series B Liquidation Amount**"). In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series B-2 Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the sum of the Series B-2 Accrued Value of such share plus an amount equal to all accrued and unpaid dividends on such share of Series B-2 Preferred Stock that have not previously been added to the Series B-2 Accrued Value of such share, or (ii) such amount per share as would have been payable had all shares of Series B-2 Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up (the amount payable pursuant to this sentence is hereinafter referred to as the "**Series B-2 Liquidation Amount**"). In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series B-3 Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the sum of the Series B-3 Accrued Value of such share plus an amount equal to all accrued and unpaid dividends on such share of Series B-3 Preferred Stock that have not previously been added to the Series B-3 Accrued Value of such share, or (ii) such amount per share as would have been payable had all shares of Series B-3 Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up (the amount payable pursuant to this sentence is hereinafter referred to as the "**Series B-3 Liquidation Amount**"). If upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock the full amount to which they shall be entitled under this Subsection 2.1, the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2. Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

### 2.3. Deemed Liquidation Events.

2.3.1. Definition. Each of the following events shall be considered a "**Deemed Liquidation Event**" unless the holders of at least a majority of the outstanding shares of Series A Preferred Stock (the "**Required Holders**") elect otherwise by written notice sent to the Corporation at least five (5) days prior to the effective date of any such event:

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

except any such reorganization, merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such reorganization, merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such reorganization, merger or consolidation, a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such reorganization, merger or consolidation, the parent corporation of such surviving or resulting corporation (provided that, for the purpose of this Subsection 2.3.1, all shares of Common Stock issuable upon exercise of Options (as defined below) outstanding immediately prior to such reorganization, merger or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such reorganization, merger or consolidation shall be deemed to be outstanding immediately prior to such reorganization, merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged);

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

- (c) issuance or transfer of shares of capital stock of the Corporation, in a single transaction or series of related transactions, representing at least fifty percent (50%) of the voting power of the voting securities of the Corporation.

2.3.2. Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the "**Merger Agreement**") provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2.

(b) In the event of a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(ii), 2.3.1(b) or 2.3.1(c), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within 10 days after such Deemed Liquidation Event, then the Corporation shall send a written notice to each holder of Preferred Stock no later than the 10th day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of Sections 2.3.2(b), (c), (d) and (e) to require the redemption of such shares of Preferred Stock, and unless the Required Holders so request in a written instrument delivered to the Corporation, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors), together with any other assets of the Corporation available for distribution to its stockholders (the "**Available Proceeds**"), to the extent legally available therefor, on the 20th day after such Deemed Liquidation Event, to redeem all outstanding shares of Preferred Stock at a price per share equal to the Series A Liquidation Amount, the Series B Liquidation Amount, the Series B-2 Liquidation Amount or the Series B-3 Liquidation Amount, as applicable. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, the Corporation shall redeem a pro rata portion of each holder's shares of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. Prior to the distribution or redemption provided for in this Subsection 2.3.20, the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business. If the Corporation is required by the provisions this Section 2.3.2(b) to redeem shares, the redemption shall occur in accordance with the provisions of Sections 2.3.2(b), (c), (d) and (e). The date upon which any such redemption is required to be effected pursuant to this Section 2.3.2(b) shall be the "**Redemption Date**".

(c) The Corporation shall send written notice of any redemption pursuant to this Section 2.3.2 (the "**Redemption Notice**") to each holder of record of Preferred Stock as required by Section 2.3.2(b). Each Redemption Notice shall state:

(i) the number of shares held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice (which number shall not be less than the number of shares the Corporation is then required to redeem);

(ii) the Redemption Date and the redemption price; and

(iii) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Preferred Stock to be redeemed.

If the Corporation receives, on or prior to the 10th day after the date of delivery of the Redemption Notice to a holder of Preferred Stock, written notice from such holder that such holder elects to be excluded from the redemption provided in this Section 2.3.2, then the shares of Preferred Stock registered on the books of the Corporation in the name of such holder at the time of the Corporation's receipt of such notice shall thereafter be "**Excluded Shares.**" Excluded Shares shall not be redeemed or redeemable pursuant to this Section 2.3.2, whether on such Redemption Date or thereafter.

(d) On or before the applicable Redemption Date, each holder of shares to be redeemed on such Redemption Date, shall surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the redemption price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares represented by a certificate are redeemed, a new certificate representing the unredeemed shares shall promptly be issued to such holder.

(e) If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the redemption price payable upon redemption of the shares to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor in a timely manner, then notwithstanding that the certificates evidencing any of the shares so called for redemption shall not have been surrendered, dividends with respect to such shares shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the redemption price without interest upon surrender of their certificate or certificates therefor. Any shares of Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred.

2.3.3. Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash

or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be mutually agreed by the Board of Directors of the Corporation and the Required Holders. If the Required Holders and the Board of Directors are not able to agree on the valuation amount within a reasonable period of time (not to exceed twenty (20) days), the valuation amount shall be determined by an investment banking firm of national recognition, which firm shall be unaffiliated with each of the Corporation and the Required Holders and shall be reasonably acceptable to the Board of Directors and the Required Holders. If the Board of Directors and the Required Holders are unable to agree upon an acceptable investment banking firm within ten (10) days after the date either party proposed that one be selected, the investment banking firm will be selected by an arbitrator located in Boston, Massachusetts, selected by the American Arbitration Association (or if such organization ceases to exist, the arbitrator shall be chosen by a court of competent jurisdiction). The arbitrator shall select the investment banking firm (within ten (10) days of his appointment) from a list, jointly prepared by the Required Holders and the Board of Directors, of not more than six investment banking firms of national standing in the United States, of which no more than three may be named by the Board of Directors and no more than three may be named by the Required Holders. The arbitrator may consider, within the ten-day period allotted, arguments from the parties regarding which investment banking firm to choose, but the selection by the arbitrator shall be made in its sole discretion from the list of six. The Board of Directors and the Required Holders shall submit their respective valuations and other relevant data to the investment banking firm, and the investment banking firm shall as soon as practicable thereafter make its own determination of the valuation amount. The final valuation amount for purposes hereof shall be the average of the two valuation amounts closest together, as determined by the investment banking firm, from among the valuation amounts submitted by the Corporation and the Required Holders and the valuation amount calculated by the investment banking firm. The determination of the final valuation amount by such investment banking firm shall be final and binding upon the parties. The Corporation shall pay the fees and expenses of the investment banking firm and arbitrator (if any) used to determine the valuation amount. If required by any such investment banking firm or arbitrator, the Corporation shall execute a retainer and engagement letter containing reasonable terms and conditions, including, without limitation, customary provisions concerning the rights of indemnification and contribution by the Corporation in favor of such investment banking firm or arbitrator and its officers, directors, partners, employees, agents and affiliates. If the valuation amount is for Common Stock of the Corporation, the valuation amount shall not include a discount for minority ownership or illiquidity or a control premium.

2.3.4. Allocation of Escrow. In the event of a Deemed Liquidation Event pursuant to Subsection 0, if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow and/or is payable to the stockholders of the Corporation subject to contingencies (including, but not limited to, earn-outs), the Merger Agreement shall provide that (a) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the “**Initial Consideration**”) shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event and (b) any additional consideration which becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with

Subsections 2.1 and 2.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction.

### 3. Voting.

3.1. General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of this Fifth Amended and Restated Certificate of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class.

3.2. Election of Directors. The holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation (the "**Series A Directors**"). The holders of record of the shares of Common Stock, exclusively and as a separate class, shall be entitled to elect five (5) directors of the Corporation (the "**Common Directors**"). Any director elected as provided in the preceding sentences may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. If the holders of shares of Series A Preferred Stock fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to the first sentence of this Subsection 3.2, then any directorship not so filled shall remain vacant until such time as the holders of the Series A Preferred Stock elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. If the holders of shares of Common Stock fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to the second sentence of this Subsection 3.2, then any directorship not so filled shall remain vacant until such time as the holders of the Common Stock elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Subsection 3.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 3.2.

3.3. Preferred Stock Protective Provisions. At any time when at least 3,000 shares of Series A Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the

Series A Preferred Stock), 3,000 shares of Series B Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock), 3,000 shares of Series B-2 Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B-2 Preferred Stock) or 3,000 shares of Series B-3 Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B-3 Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly (including through any subsidiary of the Corporation) by amendment, merger, consolidation, reclassification, reorganization or otherwise, do any of the following without (in addition to any other vote required by law or this Fifth Amended and Restated Certificate of Incorporation) the written consent or affirmative vote of the Required Holders, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class:

3.3.1. authorize or issue (by reclassification, merger, consolidation, reorganization or otherwise) any (a) Common Stock or other shares of capital stock of the Corporation or (b) securities or debt directly or indirectly exercisable for or convertible into Common Stock or other capital stock of the Corporation (excluding (i) any shares of Series B-3 Preferred Stock issued pursuant to the Series B-3 Preferred Stock Purchase Agreement, dated on or about the date hereof, among the Corporation and the purchasers of the Series B-3 Preferred Stock named therein or shares of Common Stock issued on conversion of any such shares of Series B-3 Preferred Stock; and (ii) up to Sixteen Thousand, Six Hundred Forty-Five (16,645) shares of Common Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization), issued or issuable to officers, directors, consultants, advisors or employees of the Corporation (it being understood that any such shares issued that expire or terminate unexercised or are repurchased by the Corporation shall not be counted towards the maximum number unless and until regranted or reissued) issued pursuant to the Corporation's equity incentive plan);

3.3.2. alter, amend or waive any provisions of this Fourth Amended and Restated Certificate of Incorporation or by-laws;

3.3.3. increase or decrease the number of authorized shares of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock or Series B-3 Preferred Stock;

3.3.4. declare or pay any dividends or distributions on or make redemptions of equity securities, except for repurchases from employees, directors, advisors or consultants pursuant to contractual call rights or rights of first refusal in which all the stock of the employee, director, advisor or consultant is redeemed at a price no greater than the original price paid for such shares;

3.3.5. merge or consolidate with or into another entity, whether or not the Corporation or a subsidiary is the surviving corporation;

3.3.6. acquire all or substantially all of the property, assets or stock of any other person or entity or make any investment in any other person or entity;

3.3.7. sale, transfer or other disposition (which for purposes of clarification excludes inventory and other sales in the ordinary course of business) in any transaction or series of related transactions of more than 25% of the fair market value of the Corporation's consolidated assets;

3.3.8. create, permit the creation of, or hold capital stock in, any direct or indirect subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Corporation;

3.3.9. enter into or incur any debt or capital lease obligation (other than working capital loans, equipment lease obligations and other similar obligations in the ordinary course of business);

3.3.10. change the authorized number of members of the Board of Directors of the Corporation to be other than seven (7);

3.3.11. enter into a transaction with affiliates or senior management, except for arms-length employment agreements; or

3.3.12. increase the shares available under existing equity incentive plans or adopt new equity incentive plans.

#### 4. Optional Conversion.

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

##### 4.1. Right to Convert.

4.1.1. Series A Conversion Ratio. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A Original Issue Price by the Series A Conversion Price (as defined below) in effect at the time of conversion. The "**Series A Conversion Price**" shall initially be equal to \$33.33333 per share. Such initial Series A Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

4.1.2. Series B Conversion Ratio. Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series B Original Issue Price by the Series B Conversion Price (as defined below) in effect at the time of conversion. The "**Series B Conversion Price**" shall initially be equal to \$39.81 per share. Such initial Series B Conversion Price, and the rate at which shares of Series B Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.



4.1.3. Series B-2 Conversion Ratio. Each share of Series B-2 Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series B-2 Original Issue Price by the Series B-2 Conversion Price (as defined below) in effect at the time of conversion. The "**Series B-2 Conversion Price**" shall initially be equal to \$44.46 per share. Such initial Series B-2 Conversion Price, and the rate at which shares of Series B-2 Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

4.1.4. Series B-3 Conversion Ratio. Each share of Series B-3 Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series B-3 Original Issue Price by the Series B-3 Conversion Price (as defined below) in effect at the time of conversion. The "**Series B-3 Conversion Price**" shall initially be equal to \$67.28 per share. Such initial Series B-3 Conversion Price, and the rate at which shares of Series B-3 Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

4.1.5. Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock.

4.2. Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock, the Series B Preferred Stock, Series B-2 Preferred Stock or Series B-3 Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock and/or Series B Preferred Stock and/or Series B-2 Preferred Stock and/or Series B-3 Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

4.3. Mechanics of Conversion.

4.3.1. Notice of Conversion. In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Preferred Stock represented by such certificate or certificates and, if applicable, any event on

which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in a form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice shall be the time of conversion (the "**Conversion Time**"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, (i) issue and deliver to such holder of Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the shares of Preferred Stock converted.

4.3.2. Reservation of Shares. The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Third Amended and Restated Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Series A Conversion Price and/or the Series B Conversion Price and/or the Series B-2 Conversion Price and/or the Series B-3 Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, the Series B Preferred Stock, the Series B-2 Preferred Stock or the Series B-3 Preferred Stock, respectively, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Series A Conversion Price and/or Series B Conversion Price and/or Series B-2 Conversion Price and/or the Series B-3 Conversion Price.

4.3.3. Effect of Conversion. All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Subsection 4.2 and to receive payment of any dividends declared but unpaid thereon. Any shares of Series A Preferred Stock and/or Series B Preferred Stock and/or Series B-2 Preferred Stock and/or Series B-3 Preferred Stock so

converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock and/or Series B Preferred Stock and/or Series B-2 Preferred Stock and/or Series B-3 Preferred Stock accordingly.

4.3.4. No Further Adjustment. Upon any such conversion, no adjustment to the Series A Conversion Price, the Series B Conversion Price, the Series B-2 Conversion Price or the Series B-3 Conversion Price shall be made for any declared but unpaid dividends on the Series A Preferred Stock, the Series B Preferred Stock, the Series B-2 Conversion Price or the Series B-3 Conversion Price surrendered for conversion or on the Common Stock delivered upon conversion.

4.3.5. Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

4.4. Adjustments to Series A Conversion Price, Series B Conversion Price, Series B-2 Conversion Price and Series B-3 Conversion Price for Diluting Issues.

4.4.1. Special Definitions. For purposes of this Article FOURTH, the following definitions shall apply:

(a) **“Option”** shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(b) **“Series A Original Issue Date”** shall mean the date on which the first share of Series A Preferred Stock was issued.

(c) **“Series B Original Issue Date”** shall mean the date on which the first share of Series B Preferred Stock was issued.

(d) **“Series B-2 Original Issue Date”** shall mean the date on which the first share of Series B-2 Preferred Stock was issued.

(e) **“Series B-3 Original Issue Date”** shall mean the date on which the share of Series B-3 Preferred Stock was first issued.

(f) **“Convertible Securities”** shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(g) **“Additional Shares of Common Stock”** shall mean all shares of Common Stock issued (or, pursuant to Subsection 4.4.3 below, deemed to be issued) by the Corporation after the Series B-3 Original Issue Date, other than (1) the following shares of Common Stock and (2) shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, **“Exempted Securities”**):

(i) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock or Series B-3 Preferred Stock;

(ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4.5, 4.6, 4.7 or 4.8;

(iii) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation pursuant to the Corporation's Amended & Restated Omnibus Equity Incentive Plan (the **“Stock Incentive Plan”**); or

(iv) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options outstanding on the Series A Original Issue Date or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities outstanding on the Series A Original Issue Date, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security.

4.4.2. No Adjustment of Series A Conversion Price, Series B Conversion Price, Series B-2 Conversion Price or the Series B-3 Conversion Price. No adjustment in the Series A Conversion Price, the Series B Conversion Price, the Series B-2 Conversion Price or the Series B-3 Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the Required Holders agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

4.4.3. Deemed Issue of Additional Shares of Common Stock.

(a) If the Corporation at any time or from time to time after the Series B-3 Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible

Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Series A Conversion Price, the Series B Conversion Price, the Series B-2 Conversion Price or the Series B-3 Conversion Price pursuant to the terms of Subsection 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Series A Conversion Price and/or the Series B Conversion Price and/or the Series B-2 Conversion Price and/or the Series B-3 Conversion Price, as applicable, computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Series A Conversion Price, Series B Conversion Price, Series B-2 Conversion Price or the Series B-3 Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this Section 4.4.3(b) shall have the effect of increasing the Series A Conversion Price, the Series B Conversion Price, the Series B-2 Conversion Price or the Series B-3 Conversion Price to an amount which exceeds the lower of (i) the Series A Conversion Price, the Series B Conversion Price, the Series B-2 Conversion Price or the Series B-3 Conversion Price, respectively, in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the Series A Conversion Price, the Series B Conversion Price, the Series B-2 Conversion Price or the Series B-3 Conversion Price, respectively, that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Series A Conversion Price and/or the Series B Conversion Price and/or the Series B-2 Conversion Price and/or the Series B-3 Conversion Price pursuant to the terms of Subsection 4.4.4 (either because the consideration per share (determined pursuant to Subsection 4.4.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Series A Conversion Price and/or the Series B Conversion Price and/or the Series B-2 Conversion Price and/or the Series B-3 Conversion Price, respectively, then in effect, or because such Option or Convertible Security was issued before the Series B-3 Original Issue Date), are revised after the Series B-3 Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar

provisions of such Option or Convertible Security) to provide for either (1) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 4.4.3 shall be deemed to have been issued effective upon such increase or decrease becoming effective).

(d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Series A Conversion Price and/or the Series B Conversion Price and/or Series B-2 Conversion Price and/or the Series B-3 Conversion Price pursuant to the terms of Subsection 4.4.4, the Series A Conversion Price and/or the Series B Conversion Price and/or the Series B-2 Conversion Price and/or the Series B-3 Conversion Price, as applicable, shall be readjusted to such Series A Conversion Price, Series B Conversion Price, Series B-2 Conversion Price or the Series B-3 Conversion Price, respectively, as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(e) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Series A Conversion Price and/or the Series B Conversion Price and/or the Series B-2 Conversion Price and/or the Series B-3 Conversion Price provided for in this Subsection 4.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Subsection 4.4.3). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Series A Conversion Price and/or the Series B Conversion Price and/or the Series B-2 Preferred Stock and/or Series B-3 Preferred Stock that would result under the terms of this Subsection 4.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Series A Conversion Price, the Series B Conversion Price or the Series B-2 Conversion Price or the Series B-3 Conversion Price, respectively, that such issuance or amendment took place at the time such calculation can first be made.

4.4.4. Adjustment of Series A Conversion Price, Series B Conversion Price, Series B-2 Conversion Price and Series B-3 Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the

Series B-3 Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4.4.3), without consideration or for a consideration per share less than the Series A Conversion Price and/or the Series B Conversion Price and/or the Series B-2 Conversion Price and/or the Series B-3 Conversion Price in effect immediately prior to such issue, then the Series A Conversion Price and/or the Series B Conversion Price and/or the Series B-2 Conversion Price and/or the Series B-3 Conversion Price, respectively, shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(a) "CP<sub>2</sub>" shall mean the Series A Conversion Price, the Series B Conversion Price, the Series B-2 Conversion Price or the Series B-3 Conversion Price, as applicable, in effect immediately after such issue of Additional Shares of Common Stock

(b) "CP<sub>1</sub>" shall mean the Series A Conversion Price, the Series B Conversion Price, the Series B-2 Conversion Price or the Series B-3 Conversion Price, as applicable, in effect immediately prior to such issue of Additional Shares of Common Stock;

(c) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue and all shares of Common Stock reserved for issuance under the Stock Incentive Plan as of the filing date);

(d) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP<sub>1</sub> (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP<sub>1</sub>); and

(e) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

4.4.5. Determination of Consideration. For purposes of this Subsection 4.4, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(a) Cash and Property: Such consideration shall:

(i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and

(iii) in the event Additional Shares of Common Stock are issued together with other securities (other than Additional Shares of Common Stock) or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation.

(b) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing

(i) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

4.4.6. Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Series A Conversion Price and/or the Series B Conversion Price and/or the Series B-2 Conversion Price and/or the Series B-3 Conversion Price pursuant to the terms of Subsection 4.4.4, and such issuance dates occur within a period of no more than 90 days from the first such issuance to the final such issuance, then, upon the final such issuance, the Series A Conversion Price and/or the Series B Conversion Price and/or the Series B-2 Conversion Price and/or the Series B-3 Conversion Price, as applicable, shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).



4.5. Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series B-3 Original Issue Date effect a subdivision of the outstanding Common Stock, the Series A Conversion Price, the Series B Conversion Price, the Series B-2 Conversion Price and the Series B-3 Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series B-3 Original Issue Date combine the outstanding shares of Common Stock, the Series A Conversion Price, the Series B Conversion Price, the Series B-2 Conversion Price and the Series B-3 Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.6. Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series B-3 Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Series A Conversion Price, the Series B Conversion Price, the Series B-2 Conversion Price and the Series B-3 Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price, the Series B Conversion Price, the Series B-2 Conversion Price and the Series B-3 Conversion Price then in effect by a fraction:

4.6.1. the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

4.6.2. the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing, (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Conversion Price, the Series B Conversion Price, the Series B-2 Conversion Price and the Series B-3 Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price, the Series B Conversion Price, the Series B-2 Conversion Price and the Series B-3 Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of Series A Preferred Stock, the Series B Preferred Stock, the Series B-2 Preferred Stock and the Series B-3 Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series A Preferred Stock, the Series B Preferred Stock, the Series B-2 Preferred Stock and Series B-3 Preferred Stock had been converted into Common Stock on the date of such event.

4.7. Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series B-3 Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 1 do not apply to such dividend or distribution, then and in each such event the holders of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock had been converted into Common Stock on the date of such event.

4.8. Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 2.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock or Series B-3 Preferred Stock, as applicable, immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Series A Conversion Price, the Series B Conversion Price, the Series B-2 Conversion Price and the Series B-3 Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock, as applicable.

4.9. Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price and/or the Series B Conversion Price and/or the Series B-2 Conversion Price and/or the Series B-3 Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock and/or Series B Preferred Stock and/or Series B-2 Preferred Stock and/or Series B-3 Preferred Stock, as applicable, a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock and/or the Series B Preferred Stock and/or the Series B-2 Preferred Stock and/or Series B-3 Preferred Stock

is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation, as promptly as reasonably practicable after the written request at any time of any holder of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock or Series B-3 Preferred Stock (but in any event not later than ten (10) days thereafter), shall furnish or cause to be furnished to such holder a certificate setting forth (i) the Series A Conversion Price, the Series B Conversion Price, the Series B-2 Conversion Price and the Series B-3 Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock.

4.10. Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series A Preferred Stock, the Series B Preferred Stock, the Series B-2 Preferred Stock and the Series B-3 Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series A Preferred Stock, the Series B Preferred Stock, the Series B-2 Preferred Stock, and the Series B-3 Preferred Stock and the Common Stock. Such notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion.

5.1. Trigger Events. Upon either (a) the closing of the sale of shares of Common Stock to the public at a price of at least 300% of the Series B-3 Original Issue Price per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in a firm-

commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, after which the Common Stock is listed on the New York Stock Exchange or the NASDAQ Global Market, resulting in at least \$60,000,000 of net proceeds to the Corporation (a "Qualified Public Offering") or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the Required Holders (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the "Mandatory Conversion Time"), all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate in accordance with Section 4.1.1.

5.2. Procedural Requirements. All holders of record of shares of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Series A Preferred Stock, the Series B Preferred Stock, the Series B-2 Preferred Stock and Series B-3 Preferred Stock converted pursuant to Subsection 5.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender the certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Subsection 5.2. As soon as practicable after the Mandatory Conversion Time and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock, the Corporation shall issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Subsection 4.2 and Subsection 4.3.1 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any accrued or declared but unpaid dividends on the shares of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock converted. Such converted Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock accordingly.

6. Redeemed or Otherwise Acquired Shares. Any shares of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock or Series B-3 Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock or Series B-3 Preferred Stock following redemption.

7. Waiver. Any of the rights, powers, preferences and other terms of the Series A Preferred Stock, the Series B Preferred Stock, the Series B-2 Preferred Stock and the Series B-3 Preferred Stock set forth herein may be waived, prospectively or retroactively, on behalf of all holders of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock by the affirmative written consent or vote of the Required Holders.

8. Notices. Any notice required or permitted by the provisions of this Article FOURTH to be given to a holder of shares of Series A Preferred Stock, Series B Preferred Stock, Series B-2 Preferred Stock or Series B-3 Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

**FIFTH:** Subject to any additional vote required by this Fifth Amended and Restated Certificate of Incorporation or Bylaws, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

**SIXTH:** Subject to any additional vote required by this Fifth Amended and Restated Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

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

**EIGHTH:** Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

**NINTH:** To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article NINTH to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article NINTH by the stockholders of the Corporation shall not adversely affect any right or protection of a director of

the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

**TENTH:** The Corporation shall, to the maximum extent permitted from time to time under the law of the State of Delaware, indemnify and upon request shall advance expenses to any person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or claim, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or officer of the Corporation or while a director or officer is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of any corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorney's fees and expenses), judgments, fines, penalties and amounts paid in settlement incurred in connection with the investigation, preparation to defend or defense of such action, suit, proceeding or claim; provided, however, that the foregoing shall not require the Corporation to indemnify or advance expenses to any person in connection with any action, suit, proceeding or claim initiated by or on behalf of such person or any counterclaim against the Corporation initiated by or on behalf of such person. Such indemnification shall not be exclusive of other indemnification rights arising under any by-law, agreement, vote of directors or stockholders or otherwise and shall inure to the benefit of the heirs and legal representatives of such person. Any person seeking indemnification under this Article TENTH shall be deemed to have met the standard of conduct required for such indemnification unless the contrary shall be established. The Corporation shall be the indemnitor of first resort for any director or officer who is entitled to indemnification and advancement pursuant to this Article TENTH (i.e., the Corporation's obligations to indemnify a director or officer shall be primary and any obligation of a current or former third party employer, partnership of which such director or officer is a partner, limited liability company of which such director or officer is a member or affiliate of such director or officer (any such person, an "**Indemnitor**"), to advance expenses or provide indemnification for the same expenses or liabilities incurred by such director or officer are secondary) and it shall be required to advance the full amount of expenses incurred by such director or officer and shall be liable for the full amount of expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by this Third Amended and Restated Certificate of Incorporation (or any other agreement between the Corporation and such director or officer), without regard to any rights such director or officer may have against any Indemnitor. The Corporation shall have no right to seek contribution or other reimbursement from any Indemnitor for any payments by the Corporation. Any repeal or modification of this article shall be prospective only, and shall not adversely affect any right or protection of a director or officer of the Corporation or a third party with respect to any act or omission of such director or officer of the Corporation existing or occurring prior to or at the time of such repeal or modification.

**ELEVENTH:** The Corporation hereby elects not to be governed by Section 203 of the General Corporation Law of the State of Delaware.

**TWELFTH:** To the maximum extent permitted from time to time under the law of the State of Delaware, the Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to its officers, directors or stockholders, unless such business

opportunity is presented to, or acquired, created or developed by, or otherwise comes into the possession of, such person expressly and solely in such person's capacity as an officer or director of the Corporation. No amendment or repeal of this Article TWELFTH shall apply to or have any effect on the liability or alleged liability of any officer, director or stockholder of the Corporation for or with respect to any opportunities of which such officer, director, or stockholder becomes aware prior to such amendment or repeal.

\* \* \*

3): The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law.

4): That this Sixth Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of the Corporation's Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

**IN WITNESS WHEREOF**, this Sixth Amended and Restated Certificate of Incorporation has been executed by Dana Bowers, CEO of the Corporation, as of the 18<sup>th</sup> day of March, 2016.

By:   
Dana Bowers, CEO  
Digital Comply, Inc.

115128 152747/1241582.9