

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	CHANGE OF NAME

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Medium, Inc.		05/18/2007	CORPORATION: DELAWARE

**RECEIVING PARTY DATA**

Name:	Me.dium, Inc.
Street Address:	1050 Walnut Street
Internal Address:	Suite 202
City:	Boulder
State/Country:	COLORADO
Postal Code:	80302
Entity Type:	CORPORATION: DELAWARE

**PROPERTY NUMBERS Total: 9**

Property Type	Number	Word Mark
Serial Number:	78937017	MEDIUM
Serial Number:	77086765	ME.DIUM
Serial Number:	77086696	ME.DIUM
Serial Number:	77086683	ME.DIUM
Serial Number:	77086713	ME.DIUM
Serial Number:	77174791	
Serial Number:	77174757	
Serial Number:	77174645	
Serial Number:	77174602	

**CORRESPONDENCE DATA**

Fax Number: (510)295-2401  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 510-841-9800

CH \$240.00 78937017

Email: trademarks@cobaltlaw.com  
Correspondent Name: Tsan Abrahamson/Cobalt LLP  
Address Line 1: 819 Bancroft Way  
Address Line 4: Berkeley, CALIFORNIA 94710

ATTORNEY DOCKET NUMBER:	MEDIUM ASSIGNMENTS
NAME OF SUBMITTER:	Gregory S. Soltys
Signature:	/Gregory S. Soltys/
Date:	06/23/2008

**Total Attachments: 20**

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**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
MEDIUM, INC.**

Kimbal Musk hereby certifies that:

**ONE:** The original name of this company is Medium, Inc. and the date of filing the original Certificate of Incorporation of this company with the Secretary of State of the State of Delaware was March 7, 2006.

**TWO:** He is the duly elected and acting President of Medium, Inc., a Delaware corporation.

**THREE:** The Certificate of Incorporation of this company is hereby amended and restated to read as follows:

**I.**

The name of this company is Medium, Inc. (the "**Company**").

**II.**

The address of the registered office of this Company in the State of Delaware is 2711 Centerville Road, Suite 410, City of Wilmington, County of New Castle, Zip Code 19808, and the name of the registered agent of the Company in the State of Delaware at such address is Corporation Service Company.

**III.**

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law ("**DGCL**").

**IV.**

**A.** The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is 54,990,969 shares, 35,000,000 shares of which shall be Common Stock (the "**Common Stock**") and 19,990,969 shares of which shall be Preferred Stock (the "**Preferred Stock**"). The Preferred Stock shall have a par value of one-tenth of one cent (\$0.001) per share and the Common Stock shall have a par value of one-tenth of one cent (\$0.001) per share.

**B.** The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Company entitled to vote (voting

together as a single class on an as-if-converted basis), irrespective of the provisions of Section 242(b)(2) of DGCL.

C. 10,222,285 of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "*Series A Preferred*"). 9,768,684 of the authorized shares of Preferred Stock are hereby designated "Series B Preferred Stock" (the "*Series B Preferred*" and, together with the Series A Preferred, "*Series Preferred*").

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

**1. DIVIDEND RIGHTS.**

The holders of Series Preferred shall be entitled to receive, when, as and if declared by the Board of Directors of the Company (the "*Board*"), out of any assets of the Company legally available therefor, prior and in preference to any declaration or payment of any dividend (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 Company) on the Common Stock of the Company. Any dividends or distributions paid to the holders of Common Stock shall also be paid to the holders of Series Preferred in proportion to the number of shares of Common Stock that would be held by each such holder if all shares of Series Preferred were converted to Common Stock at the then effective conversion rate.

**2. VOTING RIGHTS.**

(a) **General Rights.** Each holder of shares of Series Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series Preferred could be converted (pursuant to Section 5 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Common Stock and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company. Except as otherwise provided herein or as required by law, the Series Preferred shall vote together with the Common Stock at any annual or special meeting of the stockholders and not as a separate class, and may act by written consent in the same manner as the Common Stock.

(b) **Separate Vote of Series Preferred.** For so long as 4,000,000 shares of Series Preferred (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series Preferred after the filing date hereof) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of a majority of the outstanding Series Preferred (voting together as a separate class on an as converted basis) shall be necessary for effecting or validating the following actions (whether by amendment, merger, recapitalization, consolidation or the like):

(i) Consummate or agree to consummate a Liquidation Event (as defined in Section 3(a));

(ii) Alter or change the rights, preferences or privileges of the shares of Common Stock or Preferred Stock (or any series thereof);

(iii) Any amendment, alteration, or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Company;

(iv) Any increase or decrease in the authorized number of shares of Common Stock or Preferred Stock or any series thereof;

(v) Any authorization, issuance or obligation to authorize or issue, or any designation, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Company ranking on a parity with or senior to the Series Preferred in right of redemption, liquidation preference, voting or dividend rights or any increase in the authorized or designated number of any such new class or series;

(vi) Any redemption, repurchase, payment or declaration of dividends or other distributions with respect to Common Stock or Preferred Stock; provided, however, that this restriction shall not apply to (A) the repurchase of shares of Common Stock of the Company from employees, officers, directors, consultants or other persons performing services for the Company pursuant to agreements under which the Company has the option to repurchase such shares at cost (or the lesser of cost or fair market value) upon the termination of employment or pursuant to a right of first refusal or (B) redemptions required by Section 6 hereof;

(vii) Any increase or decrease in the authorized number of members of the Board; or

(viii) Any issuance of any securities of any subsidiary of the Company (other than any issuance to the Company which has been approved by the Board, including a majority of the Series Preferred Directors (as defined below)).

**(c) Separate vote of Series B Preferred.** For so long as 2,000,000 shares of Series B Preferred (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series B Preferred after the filing date hereof) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least sixty percent (60%) of the outstanding Series B Preferred (voting as a separate class on an as converted basis) shall be necessary for effecting or validating any amendment, alteration, or repeal of any provision of the Certificate of Incorporation (including any filing of a Certificate of Designation), that alters or changes the voting or other powers, preferences, or other special rights, privileges or restrictions of the Series B Preferred so as to affect them adversely and in a manner different than the Series A Preferred (whether by amendment, merger, recapitalization, consolidation or the like).

**(d) Election of Board of Directors.**

(i) For so long as 2,000,000 shares of the Series B Preferred remain outstanding (subject to adjustment for any stock split, reverse stock split or similar event affecting the Series B Preferred after the filing date hereof), the holders of Series Preferred, voting as a separate class, shall be entitled to elect one (1) member of the Board (the "**Series B Director**") at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(ii) For so long as 2,000,000 shares of the Series A Preferred remain outstanding (subject to adjustment for any stock split, reverse stock split or similar event affecting the Series A Preferred after the filing date hereof), the holders of Series A Preferred, voting as a separate class, shall be entitled to elect two (2) members of the Board (each, a "**Series A Director**" and collectively, the "**Series A Directors**" and, together with the Series B Director, the "**Series Preferred Directors**") at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(iii) The holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(iv) The holders of Common Stock and Series Preferred, voting together as a single class on an as-if-converted basis, shall be entitled to elect all remaining members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

### 3. LIQUIDATION RIGHTS.

(a) Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, or, subject to Section 4(a), any Acquisition or Asset Transfer (each, as defined in Section 4 below) (each, a "**Liquidation Event**"), before any distribution or payment shall be made to the holders of any Common Stock, the holders of Series Preferred shall be entitled to be paid out of the assets of the Company legally available for distribution for each share of Series Preferred held by them, (i) in the case of the Series B Preferred, an amount per share of Series B Preferred equal to the Series B Original Issue Price (as defined below) plus all declared and unpaid dividends on the Series B Preferred, and (ii) in the case of the Series A Preferred, an amount per share of Series A Preferred equal to the Series A Original Issue Price (as defined below) plus all declared and unpaid dividends on the Series A Preferred. If, upon any such Liquidation Event, the assets of the Company shall be insufficient to make payment in full to all holders of Series Preferred of the liquidation preference set forth in this Section 3(a), then such assets (or consideration) shall be distributed among the holders of Series Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled. The "**Series A Original Issue Price**" shall be \$0.5241 (as adjusted for

stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof). The “**Series B Original Issue Price**” shall be \$1.5676 (as adjusted for stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof).

(b) After the payment of the full liquidation preference of the Series Preferred as set forth in Section 3(a) above, the remaining assets of the Company legally available for distribution in such Liquidation Event (or the consideration received by the Company or its stockholders in such Acquisition or Asset Transfer), if any, shall be distributed ratably to the holders of the Common Stock and Series Preferred on an as-if-converted to Common Stock basis.

#### 4. ASSET TRANSFER OR ACQUISITION RIGHTS.

(a) Unless waived by the written consent of the holders of a majority of the outstanding Series Preferred (on an as-if-converted to Common Stock basis), an Acquisition or Asset Transfer shall be deemed a Liquidation Event and each holder of Series Preferred shall be entitled to receive, for each share of Series Preferred then held, out of the proceeds of such Acquisition or Asset Transfer, the amount of cash, securities or other property to which such holder would be entitled to receive pursuant to Section 3 above.

(b) For the purposes of this Section 4: (i) “**Acquisition**” shall mean (A) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, continue to hold at least a majority of the voting power of the surviving entity in substantially the same proportions (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions to which the Company is a party in which in excess of fifty percent (50%) of the Company’s voting power is transferred; provided that an Acquisition shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof; and (ii) “**Asset Transfer**” shall mean a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Company.

(c) In any Acquisition or Asset Transfer, if the consideration to be received by the Company or its stockholders is other than cash, its value will be deemed its fair market value as determined in good faith by the Board, in accordance with this Section 4(c). Any securities shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability covered by (ii) below:

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

on such exchange or system over the twenty (20) trading-day period ending three (3) trading days prior to the closing of the Acquisition or Asset Transfer;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the twenty (20) trading-day period ending three (3) trading days prior to the closing of the Acquisition or Asset Transfer; and

(C) If there is no active public market, the value shall be the fair market value thereof, as determined by the Company and the holders of a majority of the voting power of all then outstanding shares of Series Preferred (voting together as a separate class on an as-converted basis).

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (i) (A), (B) or (C) to reflect the approximate fair market value thereof, as mutually determined by the Company and the holders of a majority of the voting power of all then outstanding shares of Series Preferred (voting together as a single class on an as-converted basis).

(iii) The foregoing methods for valuing non-cash consideration to be distributed in connection with an Acquisition or Asset Transfer shall, upon approval by the stockholders of the definitive agreements governing an Acquisition or Asset Transfer, be superseded by any determination of such value set forth in the definitive agreements governing such Acquisition or Asset Transfer.

(d) In the event the requirements of Sections 3 and 4 are not complied with, the Company shall forthwith either:

(i) cause the closing of such Acquisition or Asset Transfer to be postponed until such time as the requirements of Sections 3 and 4 have been complied with; or

(ii) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection 5(j) hereof.

## 5. CONVERSION RIGHTS.

The holders of the Series Preferred shall have the following rights with respect to the conversion of the Series Preferred into shares of Common Stock (the "*Conversion Rights*"):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 5, any shares of Series Preferred may, at the option of the holder, be



converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series Preferred shall be entitled upon conversion shall be the product obtained by multiplying the applicable "Series Preferred Conversion Rate" then in effect (determined as provided in Section 5(b)) by the number of shares of Series Preferred being converted.

**(b) Series Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of the Series A Preferred (the "***Series A Preferred Conversion Rate***") shall be the quotient obtained by dividing the Series A Original Issue Price by the "Series A Preferred Conversion Price," calculated as provided in Section 5(c). The conversion rate in effect at any time for conversion of the Series B Preferred (the "***Series B Preferred Conversion Rate***") shall be the quotient obtained by dividing the Series B Original Issue Price by the "Series B Preferred Conversion Price," calculated as provided in Section 5(c).

**(c) Series Preferred Conversion Price.** The conversion price for the Series A Preferred shall initially be the Series A Original Issue Price (the "***Series A Preferred Conversion Price***"). The conversion price for the Series B Preferred shall initially be the Series B Original Issue Price (the "***Series B Preferred Conversion Price***"). Each of the Series A Preferred Conversion Price and the Series B Preferred Conversion Price shall collectively be referred to herein as the "***Series Preferred Conversion Prices***." Each of the initial Series Preferred Conversion Prices shall be adjusted from time to time in accordance with this Section 5. All references to the Series Preferred Conversion Price(s) herein shall mean the Series Preferred Conversion Price(s) as so adjusted.

**(d) Mechanics of Conversion.** Each holder of Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 5 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board as of the date of such conversion), any declared and unpaid dividends on the shares of Series Preferred being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Series Preferred. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended (the "***Securities Act***"), the conversion may, at the option of any holder tendering Series Preferred for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon

conversion of the Series Preferred shall not be deemed to have converted such Series Preferred until immediately prior to the closing of such sale of securities. If the conversion is in connection with automatic conversion provisions of subsection 5(k)(i), such conversion shall be deemed to have been made on the conversion date described in the stockholder consent approving such conversion, and the persons entitled to receive shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holders of such shares of Common Stock as of such date.

**(e) Adjustment for Stock Splits and Combinations.** If at any time or from time to time on or after the date that the first share of Series B Preferred is issued (the "**Original Issue Date**") the Company effects a subdivision of the outstanding Common Stock without a corresponding subdivision of the Series Preferred, the Series Preferred Conversion Prices in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Original Issue Date the Company combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Series Preferred, the Series Preferred Conversion Prices in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 5(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

**(f) Adjustment for Common Stock Dividends and Distributions.** If at any time or from time to time on or after the Original Issue Date the Company pays to holders of Common Stock a dividend or other distribution in additional shares of Common Stock without a corresponding dividend or other distribution to holders of Preferred Stock, the Series Preferred Conversion Prices then in effect shall be decreased as of the time of such issuance, as provided below:

**(i)** The Series Preferred Conversion Prices shall be adjusted by multiplying the Series Preferred Conversion Prices then in effect by a fraction:

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

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

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

**(iii)** If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series Preferred Conversion Prices shall be recomputed accordingly as of the close of business on such record

date and thereafter the Series Preferred Conversion Prices shall be adjusted pursuant to this Section 5(f) to reflect the actual payment of such dividend or distribution.

**(g) Adjustment for Reclassification, Exchange, Substitution, Reorganization, Merger or Consolidation.** If at any time or from time to time on or after the Original Issue Date the Common Stock issuable upon the conversion of the Series Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, merger, consolidation or otherwise (other than an Acquisition or Asset Transfer as defined in Section 4 or a subdivision or combination of shares or stock dividend provided for elsewhere in this Section 5), in any such event each holder of Series Preferred shall then have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, merger, consolidation or other change by holders of the maximum number of shares of Common Stock into which such shares of Series Preferred could have been converted immediately prior to such recapitalization, reclassification, merger, consolidation or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the Series Preferred Conversion Prices then in effect and the number of shares issuable upon conversion of the Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

**(h) Sale of Shares Below Series Preferred Conversion Price.**

**(i)** If at any time or from time to time on or after the Original Issue Date the Company issues or sells, or is deemed by the express provisions of this Section 5(h) to have issued or sold, Additional Shares of Common Stock (as defined below), other than as provided in Section 5(e), 5(f) or 5(g) above, for an Effective Price (as defined below) less than the then effective applicable Series Preferred Conversion Prices (a "***Qualifying Dilutive Issuance***"), then and in each such case, the then existing applicable Series Preferred Conversion Prices shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the applicable Series Preferred Conversion Prices in effect immediately prior to such issuance or sale by a fraction:

**(A)** the numerator of which shall be (x) the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale, plus (y) the number of shares of Common Stock which the Aggregate Consideration (as defined below) received or deemed received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such then-existing applicable Series Preferred Conversion Prices, and

**(B)** the denominator of which shall be the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued.

For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (x) the number of shares of Common Stock outstanding, (y) the number of shares of Common Stock into which the then outstanding shares of Series Preferred could be converted if fully converted on the day immediately preceding the given date, and (z) the number of shares of Common Stock which are issuable upon the exercise or conversion of all other rights, options and convertible securities outstanding on the day immediately preceding the given date.

(ii) No adjustment shall be made to the Series Preferred Conversion Prices in an amount less than one cent per share. Any adjustment required by this Section 5(h) shall be rounded to the nearest one cent \$0.01 per share. Any adjustment otherwise required by this Section 5(h) that is not required to be made due to the preceding two sentences shall be included in any subsequent adjustment to the applicable Series Preferred Conversion Prices. Except to the limited extent provided for in subsections 5(h)(iv)(C) and 5(h)(iv)(D), no adjustment of such applicable Series Preferred Conversion Prices pursuant to this subsection 5(h) shall have the effect of increasing the applicable Series Preferred Conversion Prices above the applicable Series Preferred Conversion Prices in effect immediately prior to such adjustment.

(iii) For the purpose of making any adjustment required under this Section 5(h), the aggregate consideration received by the Company for any issue or sale of securities (the "**Aggregate Consideration**") shall be defined as: (A) to the extent it consists of cash, be computed at the gross amount of cash received by the Company before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale and without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined below) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iv) For the purpose of the adjustment required under this Section 5(h), if the Company issues or sells (x) Preferred Stock or other stock, options, warrants, purchase rights or other securities convertible into Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "**Convertible Securities**") or (y) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the applicable Series Preferred Conversion Prices, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities plus:

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

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

(C) If the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; *provided further*, that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities.

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

(v) For the purpose of making any adjustment to the applicable Series Preferred Conversion Prices required under this Section 5(h), "***Additional Shares of Common Stock***" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 5(h) (including shares of Common Stock subsequently reacquired or retired by the Company), other than the following (the "***Excluded Securities***"):

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

(B) up to 5,236,016 shares of Common Stock and/or options, warrants or other Common Stock purchase rights and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof) after the Original Issue Date to employees, officers or directors of, or consultants or advisors to, the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board, including a majority of the Series Preferred Directors, plus any increase in such amount as may be approved by the Board, including a majority of the Series Preferred Directors; *provided, however*, that such amounts shall be increased to reflect any shares of Common Stock (i) not issued pursuant to the rights, agreements, option or warrants (“*Unexercised Options*”) as a result of the termination of such Unexercised Options or (ii) reacquired by the Company from employees, directors or consultants at cost (or the lesser of cost or fair market value) pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company;

(C) shares of Common Stock issued pursuant to the exercise of Convertible Securities outstanding as of the Original Issue Date;

(D) shares of Common Stock issued upon a stock split, stock dividend, or any subdivision of shares of Common Stock;

(E) shares of Common Stock or Convertible Securities issued for consideration other than cash pursuant to a merger, consolidation, acquisition, strategic alliance or similar business combination approved by the Board, including a majority of the Series Preferred Directors;

(F) shares of Common Stock or Convertible Securities issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution, provided such issuances are for other than primarily equity financing purposes and provided such loan, debt financing or arrangement is approved by the Board, including a majority of the Series Preferred Directors;

(G) any Common Stock or Convertible Securities issued in connection with strategic transactions involving the Company and other entities, including (i) joint ventures, manufacturing, marketing or distribution arrangements or (ii) technology transfer or development arrangements; *provided* that the issuance of shares therein has been approved by the Company’s Board, including a majority of the Series Preferred Directors;

(H) shares of Common Stock issued in connection with the Company’s initial public offering; and

(I) shares of Common Stock or Convertible Securities issued pursuant to a transaction or series of related transactions with respect to which the holders of a majority of the outstanding shares of the Series Preferred have waived any adjustment of the

applicable Series Preferred Conversion Prices pursuant to this Section 5(h) in connection with the issuance of such securities.

References to Common Stock in the subsections of this clause (v) above shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 5(h). The "**Effective Price**" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company under this Section 5(h), into the Aggregate Consideration received, or deemed to have been received by the Company for such issue under this Section 5(h), for such Additional Shares of Common Stock. In the event that the number of shares of Additional Shares of Common Stock or the Effective Price cannot be ascertained at the time of issuance, such Additional Shares of Common Stock shall be deemed issued immediately upon the occurrence of the first event that makes such number of shares or the Effective Price, as applicable, ascertainable as determined in good faith by the Board.

(vi) In the event that the Company issues or sells, or is deemed to have issued or sold, Additional shares of Common Stock in a Qualifying Dilutive Issuance (the "**First Dilutive Issuance**"), then in the event that the Company issues or sells, or is deemed to have issued or sold, Additional Shares of Common Stock in a Qualifying Dilutive Issuance other than the First Dilutive Issuance as a part of the same transaction or series of related transactions as the First Dilutive Issuance (a "**Subsequent Dilutive Issuance**"), then and in each such case upon a Subsequent Dilutive Issuance the applicable Series Preferred Conversion Prices shall be reduced to the applicable Series Preferred Conversion Prices that would have been in effect had the First Dilutive Issuance and each Subsequent Dilutive Issuance all occurred on the closing date of the First Dilutive Issuance.

(i) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the applicable Series Preferred Conversion Prices for the number of shares of Common Stock or other securities issuable upon conversion of the Series Preferred, if the Series Preferred is then convertible pursuant to this Section 5, the Company, at its expense, shall compute such adjustments or readjustments in accordance with the provisions hereof and shall, upon request, prepare a certificate showing such adjustments or readjustments, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series Preferred so requesting at the holder's address as shown in the Company's books. The certificate shall set forth such adjustments or readjustments, showing in detail the facts upon which such adjustments or readjustments are based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the applicable Series Preferred Conversion Prices at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the applicable Series Preferred. Failure to request or provide such notice shall have no effect on any such adjustment.

(j) **Notices of Record Date.** Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as

defined in Section 4) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section 4), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series Preferred at least twenty (20) days prior to (x) the record date, if any, specified therein; or (y) if no record date is specified, the date upon which such action is to take effect (or, in either case, such shorter period approved by the holders of a majority of the outstanding Series Preferred (voting together as a single class on an as converted basis)) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

**(k) Automatic Conversion.**

**(i) For Series Preferred Upon Election or Qualified IPO.**

Each share of Series Preferred shall automatically be converted into shares of Common Stock, based on the then-effective applicable Series Preferred Conversion Prices, (A) at any time upon the affirmative election of the holders of a majority of the outstanding shares of the Series Preferred (voting together as a single class on an as converted basis), or (B) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least \$7.84 (as adjusted for stock splits, dividends, recapitalizations and the like after the filing date hereof), and (ii) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least \$20,000,000. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

**(ii) For Series Preferred Upon Non-Participation in Dilutive Financing.**

**(A) In the event that:**

**(1)** the Board determines to consummate a bona fide fundraising transaction through the issuance of equity securities at an Effective Price per share that is less than or equal to the Series B Original Issue Price (as adjusted for stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) (a "*Dilutive Financing*"); *provided, however*, sales of Series B Preferred pursuant to the Series B Preferred Stock Purchase Agreement dated on or about the Original Issue Date among the Company and the Purchasers named therein, as it may be amended from time to time, shall not be considered a "Dilutive Financing" hereunder;



(2) the Company delivers to each Major Investor (as defined in the Amended and Restated Investor Rights Agreement dated on or about the Original Issue Date among the Company and the Investors named therein, as it may be amended from time to time (the “*Investor Rights Agreement*”)), a notice (a “*Dilutive Financing Notice*”) setting forth, at a minimum, (i) the Board’s determination to consummate such Dilutive Financing and the date on which such Dilutive Financing is expected to be consummated (which shall be not less than twenty (20) days following the date the Dilutive Financing Notice is delivered), (ii) the amount, type and price of the equity securities, to be issued in such Dilutive Financing and (iii) such Major Investor’s pro rata share of the securities to be issued in the Dilutive Financing (calculated in accordance with the preemptive rights provisions set forth in Section 4 of the Investor Rights Agreement); provided that, regardless of the total amount raised by the Company in the Dilutive Financing, each Major Investor’s pro rata share required to be purchased in the Dilutive Financing shall not exceed each Major Investor’s pro rata share of the positive difference, if any, between (i) \$7,000,000 and (ii) the aggregate proceeds raised by the Company in any Dilutive Financings that occurred after the Original Issue Date and prior to the date of the currently proposed Dilutive Financing); and

(3) the Company thereafter consummates such Dilutive Financing (on a date not less than twenty (20) days following the date the Dilutive Financing Notice is delivered) and such Major Investor does not purchase at least its pro rata share of such securities in such Dilutive Financing as set forth in such Dilutive Financing Notice; *provided, however*, that a Major Investor shall be deemed to have participated in the Dilutive Financing, if, and to the extent that, its affiliates, including entities that are not current stockholders of the Company, participate in such Dilutive Financing, and are identified as “affiliates” of such Major Investor at the time of such Dilutive Financing;

(B) then notwithstanding any other provision of this Certificate of Incorporation, such Major Investor’s shares of Series Preferred shall, automatically and without any action on the part of the holder thereof, be converted, at the then-effective applicable Series Preferred Conversion Prices, into shares of Common Stock of the Company, effective as of the completion of the closing of the Dilutive Financing (the “*Dilutive Financing Conversion Time*”), and all rights of the holder of such shares as a holder of Series Preferred shall immediately upon such Dilutive Financing Conversion Time cease and terminate with respect to the shares so converted (including without limitation any rights to declared but unpaid dividends, which shall be forfeited immediately upon the Dilutive Financing Conversion Time).

(C) The provisions of this Section 5(k)(ii) may be waived, with respect to any Dilutive Financing, by the holders of at least eight-five percent (85%) of the then outstanding Series Preferred, voting together as a separate class on an as-if-converted basis.

(D) The provisions of this Section 5(k)(ii) shall terminate after such time as the Company shall have raised at least \$7,000,000 in aggregate proceeds from one or more Dilutive Financings.

**(iii) Automatic Conversion Mechanics.** Upon the occurrence of any of the events specified in Sections 5(k)(i) and (ii) above, the outstanding shares of Series Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; *provided, however*, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series Preferred, the holders of Series Preferred shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock into which the shares of Series Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

**(l) Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the fair market value of one share of Common Stock (as determined by the Board) on the date of conversion.

**(m) Reservation of Stock Issuable Upon Conversion.** The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series Preferred. 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 Series Preferred, the Company will 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 purpose.

**(n) Notices.** Any notice required by the provisions of this Section 5 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day

delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

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

## 6. REDEMPTION.

(a) The Company shall be obligated to redeem the Series Preferred as follows:

(i) The holders of at least a majority of the then outstanding shares of Series Preferred, voting together as a separate class on an as-if-converted basis, may require the Company, to the extent it may lawfully do so, to redeem all of the then outstanding Series Preferred in three (3) annual installments beginning not prior to the fifth anniversary of the Original Issue Date, (each a "**Redemption Date**"); *provided* that the Company shall receive at least sixty (60) days prior to the first such Redemption Date written notice of such election of the Series Preferred. The Company shall effect such redemptions on each Redemption Date by paying in cash in exchange for the shares of Series Preferred to be redeemed on such Redemption Date, (i) in the case of the Series B Preferred, an amount per share of Series B Preferred equal to the Series B Original Issue Price plus any declared and unpaid dividends, and (ii) in the case of the Series A Preferred, an amount per share of Series A Preferred equal to the Series A Original Issue Price plus any declared and unpaid dividends. The total amount to be paid for the Series Preferred is hereinafter referred to as the "**Redemption Price**." The number of shares of Series Preferred that the Company shall be required to redeem on any one Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of Series Preferred outstanding immediately prior to the Redemption Date by (B) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 6(a) shall be redeemed from each holder of Series Preferred on a pro rata basis, based on the number of shares of Series Preferred then held.

(ii) At least thirty (30) days but no more than sixty (60) days prior to the first Redemption Date, the Company shall send a notice (a "**Redemption Notice**") to all holders of Series Preferred to be redeemed setting forth (A) the Redemption Price for the shares to be redeemed; and (B) the place at which such holders may obtain payment of the Redemption Price upon surrender of their share certificates. If the Company does not have sufficient funds legally available to redeem all shares to be redeemed at the Redemption Date (including, if applicable, those to be redeemed at the option of the Company), then it shall so notify such holders and shall redeem such shares pro rata (based on the portion of the aggregate Redemption Price payable to them) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(b) On or prior to the Redemption Date, the Company shall deposit the Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after such Redemption Date, the Redemption Price of the shares to their respective holders upon the surrender of their share certificates. Any moneys deposited by the Company pursuant to this Section 6(b) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section 5 hereof no later than the fifth (5th) day preceding the applicable Redemption Date shall be returned to the Company forthwith upon such conversion. The balance of any funds deposited by the Company pursuant to this Section 6(b) remaining unclaimed at the expiration of two (2) years following such Redemption Date shall be returned to the Company promptly upon its written request.

(c) On or after each such Redemption Date, each holder of shares of Series Preferred to be redeemed shall surrender such holder's certificates representing such shares to the Company in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after such Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Company is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as holder of Series Preferred (except the right to receive the Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares; *provided* that in the event that shares of Series Preferred are not redeemed due to a default in payment by the Company or because the Company does not have sufficient legally available funds, such shares of Series Preferred shall remain outstanding and shall be entitled to all of the rights and preferences provided herein until redeemed.

(d) In the event of a call for redemption of any shares of Series Preferred, the Conversion Rights (as defined in Section 5) for such Series Preferred shall terminate as to the shares designated for redemption at the close of business on the last business day preceding the applicable Redemption Date, unless default is made in payment of the Redemption Price or the Company does not have sufficient legally available funds.

#### 7. NO REISSUANCE OF SERIES PREFERRED.

No shares of Series Preferred acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued.

### V.

A. The liability of the directors of the Company for monetary damages shall be eliminated to the fullest extent under applicable law.

**B.** Any repeal or modification of this Article V shall only be prospective and shall not affect the rights under this Article V in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability.

## **VI.**

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

**A.** The management of the business and the conduct of the affairs of the Company shall be vested in its Board. The number of directors which shall constitute the whole Board shall be fixed by the Board in the manner provided in the Bylaws, subject to any restrictions which may be set forth in this Certificate of Incorporation.

**B.** Except as otherwise provided in this Certificate of Incorporation, in furtherance and not in limitation of the power conferred by statute, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Company.

**C.** The directors of the Company need not be elected by written ballot unless the Bylaws so provide.

## **VII.**

To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) agents of the Company (and any other persons to which DGCL permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the DGCL, subject only to limits created by applicable DGCL (statutory or non-statutory), with respect to actions for breach of duty to the Company, its stockholders, and others.

Any amendment, repeal or modification of the foregoing provisions of this Article VII shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of the Company with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

**FOUR:** This Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of the Company.

**FIVE:** This Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the DGCL. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL by the stockholders of the Company.

IN WITNESS WHEREOF, Medium, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by its President this 18<sup>th</sup> day of May, 2007.

MEDIUM, INC.

Signature: 

Name: Kimbal Musk

Title: President