

**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
RST Group, Inc.		12/21/2009	CORPORATION: DELAWARE

**RECEIVING PARTY DATA**

Name:	SecondMarket Holdings, Inc.
Street Address:	17 BATTERY PLACE, 11TH FLOOR
City:	New York
State/Country:	NEW YORK
Postal Code:	10004
Entity Type:	CORPORATION: DELAWARE

**PROPERTY NUMBERS Total: 7**

Property Type	Number	Word Mark
Serial Number:	77541548	SECONDMARKET
Serial Number:	77815540	SECONDMARKET
Serial Number:	77796165	ECOSYSTEM
Serial Number:	77796160	SECONDMARKET ECOSYSTEM
Serial Number:	77762939	MICROMARKET
Serial Number:	77740975	PRIVATE COMPANY MARKET
Serial Number:	77740972	PRIVATE COMPANY MARKET

**CORRESPONDENCE DATA**

Fax Number: (617)523-6850  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 6175232700  
 Email: elizabeth.burkhard@hklaw.com  
 Correspondent Name: Elizabeth Burkhard  
 Address Line 1: 10 St. James Avenue  
 Address Line 2: 11th Floor

OP \$190.00 77541548

**900154758**

**TRADEMARK  
 REEL: 004149 FRAME: 0532**

Address Line 4: Boston, MASSACHUSETTS 02116

ATTORNEY DOCKET NUMBER: 112598.00004

NAME OF SUBMITTER: Elizabeth R. Burkhard

Signature: /Elizabeth Burkhard/

Date: 02/16/2010

**Total Attachments: 23**

source=A&R COI 12 21 2009#page1.tif  
source=A&R COI 12 21 2009#page2.tif  
source=A&R COI 12 21 2009#page3.tif  
source=A&R COI 12 21 2009#page4.tif  
source=A&R COI 12 21 2009#page5.tif  
source=A&R COI 12 21 2009#page6.tif  
source=A&R COI 12 21 2009#page7.tif  
source=A&R COI 12 21 2009#page8.tif  
source=A&R COI 12 21 2009#page9.tif  
source=A&R COI 12 21 2009#page10.tif  
source=A&R COI 12 21 2009#page11.tif  
source=A&R COI 12 21 2009#page12.tif  
source=A&R COI 12 21 2009#page13.tif  
source=A&R COI 12 21 2009#page14.tif  
source=A&R COI 12 21 2009#page15.tif  
source=A&R COI 12 21 2009#page16.tif  
source=A&R COI 12 21 2009#page17.tif  
source=A&R COI 12 21 2009#page18.tif  
source=A&R COI 12 21 2009#page19.tif  
source=A&R COI 12 21 2009#page20.tif  
source=A&R COI 12 21 2009#page21.tif  
source=A&R COI 12 21 2009#page22.tif  
source=A&R COI 12 21 2009#page23.tif

# Delaware

PAGE 1

*The First State*

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 "RST GROUP, INC.", CHANGING ITS NAME FROM "RST GROUP, INC." TO "SECONDMARKET HOLDINGS, INC.", FILED IN THIS OFFICE ON THE TWENTY-FIRST DAY OF DECEMBER, A.D. 2009, AT 3:35 O'CLOCK P.M.


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

3801204 8100

091122746



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

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 7713319

DATE: 12-21-09

TRADEMARK  
REEL: 004149 FRAME: 0534

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION OF  
RST GROUP, INC.**

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

The undersigned, Barry E. Silbert, hereby certifies that:

**ONE:** He is the duly elected and acting Chief Executive Officer of RST Group, Inc., a Delaware corporation.

**TWO:** The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of the State of Delaware on August 20, 2007.

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

**I.**

The name of this company is **SECONDMARKET HOLDINGS, INC.** (the "**Company**" or the "**Corporation**").

**II.**

The address of the registered office of this Company in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, in the City of Wilmington, New Castle County, Delaware 19808. The Resident Agent in charge thereof 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 Fifty-Eight Million Four Hundred Ninety-Three Thousand Six Hundred Fifty (58,493,650) shares, each with a par value of \$0.001 per share, Fifty Million (50,000,000) shares of which shall be Common Stock (the "**Common Stock**") and Eight Million Four Hundred Ninety-Three Thousand Six Hundred Fifty (8,493,650) shares of which shall be Preferred Stock (the "**Preferred Stock**").

**B.** The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Article IV(B).

**1. Dividend Rights.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of Common Stock shall be entitled to receive, when and as declared by the Board of Directors of the Company (the "**Board**"), out of any assets or funds of the Company legally available therefor, such dividends as may be declared from time to time by the Board, consistent with Article IV(D)(1).

**2. Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Company or the occurrence of a Liquidation Event, the assets of the Company shall be distributed as provided in Article IV(D)(3).

**3. Redemption.** The Common Stock is not redeemable.

**4. Voting Rights.** Each holder of Common Stock shall have the right to one vote per share of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company (the "**Bylaws**"), and shall be entitled to vote upon such matters and in such manner as may be provided by law. The number of authorized shares of Common Stock may be increased or decreased (but not the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Company entitled to vote (voting together on an as-if converted to Common Stock basis), irrespective of the provisions of Section 242(b)(2) of the DGCL.

**C.** Five Million Eight Hundred Twenty-Seven Thousand Five Hundred Five (5,827,505) of the authorized shares of Preferred Stock are hereby designated "**Series A Preferred Stock**" (the "**Series A Preferred**"), and Two Million Six Hundred Sixty-Six Thousand One Hundred Forty-Five (2,666,145) shares of Preferred Stock are hereby designated "**Series B Preferred Stock**" (the "**Series B Preferred**").

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

**1. DIVIDEND RIGHTS.**

**(a)** Holders of Series A Preferred and Series B Preferred, in preference to the holders of Common Stock, shall be entitled to receive, when and if declared by the Board, but only out of funds that are legally available therefor, dividends at the rate of six percent (6%) of the applicable Original Issue Price (as defined below) per annum, non-compounded, on each outstanding share of Series A Preferred and Series B Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). Such dividends shall be payable only when, as and if declared by the Board and shall not be cumulative. Any partial payment shall be made ratably among the holders of Preferred Stock in proportion to the payment each such holder would receive if the full amount of such dividends were paid.

(b) The “*Original Issue Price*” shall mean with respect to Series A Preferred, \$0.5720 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof, the “*Series A Original Issue Price*”) and with respect to the Series B Preferred, \$5.6261 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof, the “*Series B Original Issue Price*”).

(c) So long as any shares of Preferred Stock are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Common Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock (except as provided in Section 1(e) hereof) until all dividends as set forth in Section 1(a) above on the Preferred Stock shall have been paid or declared and set apart for the year, except for:

(i) acquisitions of Common Stock by the Company at a price that is either no greater than fair market value as determined by the Board and holders of a majority of the outstanding shares of Preferred Stock, voting together as a single class on an as-if converted to Common Stock basis (the “*Majority Preferred Holders*”) or equal to the original purchase price of such shares, in each case, upon an employee or consultant’s termination of employment or consulting services with the Company in accordance with: (a) the terms of a written agreement in effect on the date of filing of this Amended and Restated Certificate of Incorporation; or (b) an agreement, plan or arrangement approved by the Board on or after the date of filing of this Amended and Restated Certificate of Incorporation;

(ii) acquisitions of Common Stock, Preferred Stock or other securities exercisable, convertible or exchangeable for Common Stock or Preferred Stock in exercise of the Company’s right of first refusal and/or redemption rights to repurchase such shares; or

(iii) distributions to holders of Common Stock in accordance with Sections 3 and 4 hereof.

(d) In the event dividends are paid on any share of Common Stock and such dividends are greater than the dividends payable on the Preferred Stock set forth in Section 1(a) above, the Company, as a condition precedent to the payment of such dividends, shall pay an additional dividend on all outstanding shares of Preferred Stock, at the time of payment of such dividends, in a per share amount equal (on an as-if converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock less the dividend payable pursuant to Section 1(a) above.

(e) The provisions of Sections 1(c) and 1(d) above shall not apply to a dividend payable solely in Common Stock to which the provisions of Section 5(f) hereof are applicable, or any repurchase of any outstanding securities of the Company that is approved by (i) the Board and (ii) the Majority Preferred Holders.

## 2. VOTING RIGHTS.

**(a) General Rights.** Each holder of shares of the Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could be converted (pursuant to Section 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. Except as otherwise provided herein or as required by law, the Preferred Stock 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. An amendment to the Certificate of Incorporation to increase or decrease the number of authorized shares of Common Stock shall only require the approval of a majority of the Preferred Stock and the Common Stock voting as a single class (on an as-if converted to Common Stock basis), without a separate class vote by the Common Stock or the Preferred Stock.

**(b) Separate Vote of Preferred Stock.** For so long as (i) at least 50% of the Maximum Outstanding Preferred Stock (as equitably adjusted for any stock dividends, stock splits, combinations of shares, reorganizations, recapitalizations and other similar events with respect to such shares after the filing date hereof) remains outstanding and (ii) the holders of Preferred Stock own not less than 10% of the Common Stock (assuming the conversion, exercise or exchange of all securities directly or indirectly convertible into or exercisable or exchangeable for Common Stock), in addition to any other vote or consent required herein or by law, the vote or written consent of the Majority Preferred Holders shall be necessary for effecting or validating the following actions (whether by merger, recapitalization or otherwise):

**(i)** a merger or consolidation of the Company in which the stockholders of the Company do not hold 75% of the voting power of the merged or surviving company immediately following such merger or consolidation; provided that in the event that the consideration to be delivered at the closing of such merger or consolidation to the holders of Series B Preferred Stock is less than 2.5 times the Original Issue Price per share, then the written consent of the holders of a majority of the outstanding shares of Series B Preferred Stock shall also be required;

**(ii)** the sale of all or substantially all of the assets or intellectual property rights of the Company at a transaction value of less than \$445,000,000;

**(iii)** any amendment to the Certificate of Incorporation or Bylaws that materially and adversely affects the rights, preferences or privileges of the Preferred Stock;

**(iv)** the authorization, creation or issuance of any shares of capital stock, or equity securities convertible into, or exchangeable or exercisable for, any shares of capital stock, having rights, privileges or preferences senior to or on parity with the Preferred Stock as to dividend rights, redemption rights, and liquidation preference; provided that if an equity security is issued a price per share below the Original Issue Price (i.e., a down round), then

the written consent of the holders of a majority of the outstanding shares of Series B Preferred Stock shall also be required;

(v) the liquidation, dissolution, winding-up, recapitalization or reorganization of the Company;

(vi) the incurrence of indebtedness in excess of \$5,000,000 in the aggregate, other than trade credit incurred in the ordinary course of the Company's Business (as defined below);

(vii) the guarantee by the Company of any indebtedness of any third party;

(viii) any loan or advance by the Company to any person other than a wholly owned subsidiary of the Company, except for (a) advances in the ordinary course of business or (b) advances pursuant to the indemnification provisions of the Certificate of Incorporation or Bylaws or advances required by any indemnification agreement entered into by the Company prior to or in connection with the initial issuance of shares of the Series B Preferred Stock or entered into by the Company after the initial issuance of shares of the Series B Preferred with the approval of the Board (including the affirmative votes of the Preferred Directors then serving on the Board);

(ix) the redemption or purchase of any of the capital stock of the Company, except (a) repurchases of employee or consultant Common Stock issued under the 2007 Stock Incentive Plan (or other equity incentive plan that was approved by the holders of Preferred Stock as provided in this Section 2(b)) upon termination of such employment or consulting relationship and (b) the exercise by the Company of contractual rights of first refusal, which exercise has been approved by the Board (including the affirmative votes of the Preferred Directors then serving on the Board);

(x) the increase or decrease of the authorized number of members on the Board;

(xi) the election, appointment or removal of the Company's chief executive officer, chief financial officer, president or chief operating officer;

(xii) the adoption of any new equity incentive or purchase plan and any amendments thereto or to any existing equity incentive or purchase plan;

(xiii) any sale, lease, pledge, license, transfer, assignment or other disposition or encumbrance of the intellectual property of the Company (other than licenses to the Company's customers on an arm's length basis in the ordinary course of the Company's Business); and

(xiv) any agreement to take any of the foregoing actions.



**“Maximum Outstanding Preferred Stock”** shall mean the highest number of shares of Preferred Stock outstanding on any date after the date that shares of Preferred Stock were first issued.

(c) **Separate Vote of Series A Preferred.** For so long as at least 2,913,753 shares of Series A Preferred (as equitably adjusted for any stock dividends, stock splits, combinations of shares, reorganizations, recapitalizations and other similar events respect to such shares after the filing date hereof) remain outstanding, then in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding shares of the Series A Preferred shall be necessary for effecting any amendment, alteration, or repeal of any provision of the Certificate of Incorporation or the Bylaws that alters or changes the voting or other powers, preferences, or other special rights, privileges or restrictions of the Series A Preferred (whether by merger, consolidation or otherwise) so as to affect the Series A Preferred adversely and in a manner different than any other series of Preferred Stock (it being understood that the Series A Preferred shall not be deemed affected differently because of the proportional differences in voting and the amounts of respective issue prices, and liquidation preferences that arise out of differences in the original issue price vis-à-vis other series of Preferred Stock).

(d) **Separate Vote of Series B Preferred.** For so long as at least 50% of the Maximum Outstanding Series B Preferred (as equitably adjusted for any stock dividends, stock splits, combinations of shares, reorganizations, recapitalizations and other similar events respect to such shares after the filing date hereof) remains outstanding, then in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding shares of the Series B Preferred shall be necessary for effecting: (i) any amendment, alteration, or repeal of any provision of the Certificate of Incorporation or the Bylaws that alters or changes the voting or other powers, preferences, or other special rights, privileges or restrictions of the Series B Preferred (whether by merger, consolidation or otherwise) so as to affect the Series B Preferred adversely and in a manner different than any other series of Preferred Stock (it being understood that the Series B Preferred shall not be deemed affected differently because of the proportional differences in voting and the amounts of respective issue prices, and liquidation preferences that arise out of differences in the original issue price vis-à-vis other series of Preferred Stock); (ii) the liquidation, dissolution, winding-up, recapitalization or reorganization of the Company; (iii) the increase or decrease of the authorized number of members on the Board of Directors; and (iv) any voluntary sale or transfer (other than an encumbrance) or exclusive license of the intellectual property of the Company (other than to the Company’s customers on an arm’s length basis in the ordinary course of the Company’s Business). **“Maximum Outstanding Series B Preferred”** shall mean the highest number of shares of Series B Preferred outstanding on any date after the date that shares of Series B Preferred are first issued.

(e) **Election of Board of Directors.** The Board of Directors shall consist of five (5) members.

(i) For so long as at least 2,913,753 shares of the Series A Preferred (as equitably adjusted for any stock dividends, stock splits, combinations of shares,

reorganizations, recapitalizations and other similar events with respect to such shares after the filing date hereof) remain outstanding, the holders of a majority of the Series A Preferred, voting as a separate class, shall be entitled to elect one member of the Board (the "*Series A Director*"), at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director.

(ii) For so long as at least 50% of the Maximum Outstanding Series B Preferred (as equitably adjusted for any stock dividends, stock splits, combinations of shares, reorganizations, recapitalizations and other similar events with respect to such shares after the filing date hereof) remains outstanding, the holders of a majority of the Series B Preferred, voting together as a separate class, shall be entitled to elect one member of the Board (the "*Series B Director*" and together with the Series A Director, the "*Preferred Directors.*"), at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director.

(iii) The holders of Common Stock, voting as a separate class, shall be entitled to elect two 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 Preferred Stock, voting together as a single class on an as if converted to Common Stock basis, shall be entitled to elect the remaining member 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 any Acquisition or Asset Transfer (as such terms are defined in Section 4(b) below) (each, a "*Liquidation Event*"), before any distribution or payment shall be made to the holders of Series A Preferred and Common Stock, the holders of Series B Preferred shall be entitled to be paid out of the assets of the Company legally available for distribution (or the consideration received in such Acquisition or Asset Transfer) for each share of Series B Preferred held by them, an amount per share of Series B Preferred equal to the Series B Original Issue Price of such shares plus all declared and unpaid dividends on such share. If, upon any such Liquidation Event, the assets of the Company (or the consideration received in such Acquisition or Asset Transfer) shall be insufficient to make payment in full to all holders of Series B 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 B Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

**(b)** After the payment of the full liquidation preference of the Series B Preferred as set forth in Section 3(a) above, the 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), before any distribution or payment shall be made to the holders of Common Stock, the holders of Series A Preferred shall be entitled to be paid out of the assets of the Company legally available for distribution (or the consideration received in such Acquisition or Asset Transfer) for each share of Series A Preferred held by them, an amount per share of Series A Preferred equal to the Series A Original Issue Price plus all declared and unpaid dividends on such share. If upon the occurrence of such Liquidation Event, the assets of the Company remaining after payment in full of the liquidation preference set forth in Section 3(a) above shall be insufficient to permit the payment to the holders of Series A Preferred of the full liquidation preference set forth in this Section 3(b), then the entire assets and funds of this Corporation legally available for distribution to stockholders shall be distributed ratably among the holders of the Series A Preferred in proportion to the full preferential amount each such holder is otherwise entitled to receive under this Section 3(b).

**(c)** After the payment of the full liquidation preference of the Series B Preferred and the Series A Preferred as set forth in Sections 3(a) and (b) above, the 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 Common Stock; provided, however, that each holder of shares of a series of Preferred Stock shall be deemed to have converted (regardless of whether such holder actually converted) such holder's shares of such series of Preferred Stock into shares of Common Stock immediately prior to a Liquidation Event if, as a result of an actual conversion, such holder would receive in respect of such holder's shares of series of Preferred Stock, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such holder's shares of such series of Preferred Stock into shares of Common Stock. If any such holder shall be deemed to have converted shares of a series of Preferred Stock into Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of such series of Preferred Stock that have not converted (or have not been deemed to have converted) into shares of Common Stock pursuant to Sections 3(a) and (b).

**(d)** The Company shall give each holder of record of Preferred Stock written notice of any impending Liquidation Event not later than 20 days prior to the stockholders' meeting called to approve such Liquidation Event, or 20 days prior to the closing of such Liquidation Event, whichever is earlier, and shall also notify such holders in writing of the final approval of such Liquidation Event. The first of such notices shall describe the material terms and conditions of the impending Liquidation Event and the provisions of this Section 3, and the Company shall thereafter give such holders prompt notice of any material changes. Unless such notice requirements are waived, the Liquidation Event shall not take place sooner than 20 days after the Company has given the first notice provided for herein. Notwithstanding the other provisions of the Certificate of Incorporation, all notice periods or requirements herein may be shortened or waived, either before or after the action for which notice is required, upon the written consent of the Majority Preferred Holders.

(e) In the event the requirements of this Section 3 are not complied with, the Company shall either (i) cause the closing of the Liquidation Event to be postponed until such time as the requirements of this Section 3 have been complied with, or (ii) cancel such Liquidation Event, in which event the rights, preferences, privileges and restrictions of the holders of Preferred Stock shall revert to and be the same as such rights, preferences, privileges and restrictions existing immediately prior to the date of the first notice referred to in Section 3(c).

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

(a) In the event of any distribution received by the Company of assets other than cash, the value of such assets will be deemed the fair market value of such assets as determined in good faith by the Board. Any securities shall be valued as follows:

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

(A) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30 day period ending three days prior to the distribution;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sales prices (whichever is applicable) of such securities over the 30 day period ending three days prior to the distribution; and

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

(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 make an appropriate discount from the market value determined as specified above in Section 4(a)(i) to reflect the approximate fair market value thereof, as determined in good faith by the Board; *provided, however*, that if the Majority Preferred Holders dispute any determination by the Board of the fair market value of non-cash consideration pursuant to this Section 4(a), the fair market value of such non-cash consideration will be determined by the Board upon its receipt of a fair market value calculation prepared, by a reputable investment bank, selected by the Board with experience in making valuations of such type. If the fair market value calculated by such investment bank is less than 95% of the fair market valuation determined by the Board pursuant to this Section 4(a)(ii), then the Company shall pay the fees and expenses of such investment bank in connection with such fair market value calculation; otherwise, the holders of the outstanding Preferred Stock shall pay the fees and expenses of such investment bank in connection with such fair market value calculation pro rata in accordance with the relative number of shares of Preferred Stock held by each such holder.

(b) For the purposes of Section 3 and 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 relative 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 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 or any successor 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) Notwithstanding any language to the contrary in Section 3, an Acquisition or Asset transfer shall not be treated as a Liquidation Event for purposes of Section 3 if the Majority Preferred Holders so elect by written notice sent to the Company at least five days prior to the effective date of any such event.

## 5. CONVERSION RIGHTS.

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

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 5, any share of Preferred Stock may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Preferred Stock shall be entitled upon conversion of a share of Preferred Stock shall be the product obtained by multiplying the applicable conversion rate then in effect with respect to the shares of Preferred Stock being converted (determined as provided in Section 5(b)) by the number of shares of Preferred Stock being converted.

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

(c) **Conversion Price.** The conversion price for the Series A Preferred shall initially be the Series A Original Issue Price of the Series A Preferred (the “**Series A Conversion Price**”), and the conversion price for the Series B Preferred shall initially be the

Series B Original Issue Price of the Series B Preferred (the “*Series B Conversion Price*” and along with the Series B Conversion Price, a “*Conversion Price*”). Each Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to a Conversion Price herein shall mean such Conversion Price as so adjusted.

(d) **Mechanics of Conversion.** Each holder of Preferred Stock who desires to convert shares of Preferred Stock into shares of Common Stock pursuant to Section 5(a) shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Preferred Stock, and shall give written notice to the Company at such office that such holder elects to convert such shares of Preferred Stock. Such notice shall state the number of shares of each series of Preferred Stock being converted. Thereupon, the Company shall promptly issue and deliver at such office to 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) all declared and unpaid dividends on the shares of Preferred Stock being converted and (ii) to the extent permitted by law, 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 Preferred Stock. 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 Preferred Stock 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.

(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 Preferred Stock, the Conversion Prices applicable to the Preferred Stock 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 Preferred Stock, the Conversion Prices applicable to the Preferred Stock 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 Conversion Prices then in effect shall be decreased as of the time of such issuance, as provided below:

(i) The Conversion Prices shall be adjusted by multiplying such 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 Conversion Prices shall be so adjusted effective 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 Conversion Prices shall be recomputed accordingly as of the close of business on such record date and thereafter the 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 shares of Preferred Stock 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 Preferred Stock shall then have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, merger, consolidation or other change by holders of the maximum number of shares of Common Stock into which such shares of Preferred Stock could have been converted immediately prior to such recapitalization, reclassification, 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 Preferred Stock after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the Conversion Prices then in effect and the number of shares issuable upon conversion of such shares of Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

**(h) Sale of Shares Below the 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 a then effective Conversion Price (a "*Qualifying Dilutive Issuance*"), then and in each such case, such then effective Conversion Price shall be reduced, as of the opening of

business on the date of such issue or sale, to a price determined by multiplying such Conversion Price in effect immediately prior to such issuance or sale by a fraction:

(A) whose numerator shall be (A) the number of shares of Common Stock deemed to be outstanding (as determined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the Aggregate Consideration (as defined below) received or deemed to be received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price in effect immediately prior to such issue or sale; and

(B) whose denominator 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 (A) the number of shares of Common Stock outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Preferred Stock could be converted if fully converted on the day immediately preceding the given date, and (C) 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 any Conversion Price 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 such Conversion Price.

(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 accordance with Section 4(a), 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 (including the affirmative votes of the Preferred Directors then serving on 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 Conversion Price then in effect, or there is a modification or adjustment to the terms of any Convertible Securities, rights or options outstanding on the Original Issue Date, 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; *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 per share of Common Stock payable to the Company upon the exercise or conversion of rights, options or Convertible Securities (regardless of whether such rights, options or Convertible Securities are issued before or after the Original Issue Date) 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 a Conversion Price, 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, such Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to such Conversion Price as it 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 on the conversion of such Convertible Securities; *provided* that such readjustment shall not apply to prior conversions of Preferred Stock.

(v) For the purpose of making any adjustment to the Conversion Price of any series of Preferred Stock 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:

(A) shares of Common Stock issued upon conversion of Preferred Stock, or as a dividend or distribution on Preferred Stock;

(B) shares of Common Stock or Convertible Securities issued after the Original Issue Date to employees, officers or directors of, or consultants or advisors to, the Company or any subsidiary pursuant to the 2007 Stock Incentive Plan or other stock purchase or stock option plans or other arrangements that are approved by the Board and the Majority Preferred Holders;

(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 or Convertible Securities issued for consideration other than cash pursuant to a merger, consolidation, acquisition, or similar business combination approved by the Board and the Majority Preferred Holders;

(E) 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 approved by the Board and the Majority Preferred Holders;

(F) issuance of securities in connection with bona fide business relationships with third parties primarily for joint venture, technology licensing or development activities purposes, the terms of which are approved by the Board and the Majority Preferred Holders;

(G) any issuance of Common Stock for which adjustment is made as described in Sections 5(e), (f) or (g); and

(H) shares of Common Stock or Convertible Securities not described in Section 5(h)(v)(A) through Section 5(h)(v)(E) that the holders of at least a majority of the then outstanding shares of Preferred Stock agree in writing to exclude from the definition of Additional Shares of Common Stock.

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). Notwithstanding anything to the contrary herein, the right of the Majority Preferred Holders to approve any matters in the subsections of this clause (v) shall terminate upon termination of the separate vote of the Preferred Stock under Section IV.D.2(b) hereof. 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 in connection with such issue under this Section 5(h) of such Additional Shares of Common Stock.

(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, if a Conversion Price is greater than the Effective Price, such Conversion Price shall be reduced to the Conversion Price 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 a Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Preferred Stock, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof, prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of shares of Preferred Stock to which such adjustment pertains at the holder's address as shown in the Company's books and records. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Conversion Price then 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 such shares of Preferred Stock. Failure or provide such notice shall have no effect on any such adjustment.

(j) **Waiver of Adjustment of Conversion Price.** Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived by the consent or vote of the holders of the majority of the outstanding shares of such series either before or after the issuance causing the adjustment. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

(k) **Notices of Record Date.** If the Company shall propose at any time to (i) take 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) effect 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, then the Company shall mail to each holder of Preferred Stock at least ten 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 Majority Preferred Holders 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 of the Company) shall be entitled to exchange their shares of Common Stock (or other securities of the Company) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

**(I) Automatic Conversion.**

**(i)** Each share of Preferred Stock shall automatically be converted into shares of Common Stock, based on the then-effective Conversion Price applicable to such share, (A) with respect to Series A Preferred, at any time upon the affirmative election of the holders of a majority of the outstanding shares of Series A Preferred, and with respect to Series B Preferred, at any time upon the affirmative election of the holders of a majority of the outstanding shares of Series B Preferred, or (B) immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least \$14.07 (as equitably adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof), and (ii) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least \$25,000,000. Upon such automatic conversion, all declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

**(ii)** Upon the occurrence of either of the events specified in Section 5(k)(i) above, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; *provided, however*, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Preferred Stock, the holders of Preferred Stock shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the

Preferred Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred, and all declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

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

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

(o) **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 (as defined below), (iii) five days after having been sent by international courier, registered or certified mail, return receipt requested, postage prepaid, or (iv) if sent locally, one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be sent to each holder of record at the address, electronic mail address or facsimile number of such holder appearing on the books and records of the Company. "**Business Day**" shall mean any day, other than a Saturday or a Sunday, on which commercial banks are required to be open in New York, New York.

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

**(q) No Impairment.** Except as provided for in Section 2(b), the Company will not, by amendment of the Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed by the Company pursuant to this Section 5 but will at all times in good faith carry out all of the provisions of this Section 5 and take all such action as may be necessary or appropriate in order to protect the Conversion Rights of the Preferred Stock against impairment.

**6. REDEMPTION.** The Preferred Stock is not redeemable.

**7. NO REISSUANCE OF PREFERRED STOCK.**

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

## V.

**A.** The personal liability of the directors of the Company for monetary damages shall be eliminated to the fullest extent permitted under applicable law, as the same exists today or may be amended.

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

**C.** To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which the 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.

**D.** 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.

**B.** Subject to the rights of the holders of the Preferred Stock, consent of a majority of the Board shall be required prior to, among other things, the Company taking the following actions:

1. entering into any agreement relating to the merger or consolidation of the Company in which the stockholders of the Company do not hold at least 75% of the voting power of the merged company immediately following such merger or acquisition;

2. entering into an agreement to acquire another entity or substantially all of the assets of another entity for a purchase price in excess of \$1,000,000;

3. paying, declaring or setting aside any dividends or distributions on the capital stock of the Company other than the Preferred Stock;

4. incurring any indebtedness in excess of \$2,000,000, in the aggregate, other than trade credit in the ordinary course of the Company's Business;

5. approving the annual budget or operating plan of the Company or any updates thereto or material deviations therefrom;

6. pledging or otherwise encumbering any assets of the Company other than in the ordinary course of the Company's Business;

7. effecting any change in accounting methods or policies (other than as required by United States generally accepted accounting principles);

8. selecting or changing the Company's auditors or accountants; and

9. the making of any material change in the nature of the Company's Business as carried on as of the Original Issue Date.

"Business" means the business of (i) providing and maintaining a centralized, independent marketplace and auction platform for the trading of illiquid assets between buyers and sellers, (ii) providing and maintaining an ecosystem that aggregates illiquid asset product and service providers for buyers, sellers, and interested parties, (iii) providing independent, third party valuations of illiquid assets, (iv) acting as broker dealer or placement agent for capital raises for private and public companies and providing advisory services to private and public companies, (v) acting as escrow agent in various capacities, (vi) providing products and services related to market making activities, derivatives, self clearing, providing margin, data and analytics, and (vii) providing such products and services incidental to the products and services described in clauses (i) through (vi) above.

C. The Board is expressly empowered to adopt, amend or repeal the Bylaws. The stockholders shall also have the power to adopt, amend or repeal the Bylaws; provided however, that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by the Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws.

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

## VII.

To the extent permitted by applicable law, the Company renounces any interest or expectancy of the Company in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "*Excluded Opportunity*" is any matter, transaction, or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (a) any director of the Company who is not an employee of the Company or any of its subsidiaries, or (b) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Company or any of its subsidiaries (collectively, "*Covered Persons*"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Company.

\* \* \* \*

**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.



**IN WITNESS WHEREOF, RST GROUP, INC.** has caused this Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this 21st day of December, 2009.

**RST GROUP, INC.**

By: /s/ Barry E. Silbert  
Barry E. Silbert  
Chief Executive Officer