

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM311071

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	CHANGE OF NAME		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Healthation, Inc.		11/12/2013	CORPORATION: CALIFORNIA
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Aldera, Inc.		
<b>Street Address:</b>	10680 Treena Street, Suite 303		
<b>City:</b>	San Diego		
<b>State/Country:</b>	CALIFORNIA		
<b>Postal Code:</b>	92131		
<b>Entity Type:</b>	CORPORATION: CALIFORNIA		
<b>PROPERTY NUMBERS Total: 6</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	2795110	ABOVEHEALTH	
<b>Registration Number:</b>	2996693	ACCELEHEALTH	
<b>Registration Number:</b>	4157642	HEALTHATION	
<b>Serial Number:</b>	86039256	ALDERA	
<b>Serial Number:</b>	86039077	ALDERA	
<b>Serial Number:</b>	86039265	ADVANCE WITH CONFIDENCE	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	3128767934		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	3128767925		
<b>Email:</b>	brian.mcginley@dentons.com, anita.hansen@dentons.com, trademarks.us@dentons.com		
<b>Correspondent Name:</b>	Brian R. McGinley		
<b>Address Line 1:</b>	Dentons US LLP		
<b>Address Line 2:</b>	P. O. Box 061080		
<b>Address Line 4:</b>	Chicago, ILLINOIS 60606-1080		
<b>ATTORNEY DOCKET NUMBER:</b>	10021249-0014 (BRM)		
<b>NAME OF SUBMITTER:</b>	Brian R. McGinley		
<b>SIGNATURE:</b>	/brian r mcginley/		

OP \$165.00 2795110

**DATE SIGNED:**

07/17/2014

**Total Attachments: 23**

source=1-Amended and Restated Art of Incorp of Healthation, Inc#page1.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page2.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page3.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page4.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page5.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page6.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page7.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page8.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page9.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page10.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page11.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page12.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page13.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page14.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page15.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page16.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page17.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page18.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page19.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page20.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page21.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page22.tif  
source=1-Amended and Restated Art of Incorp of Healthation, Inc#page23.tif

A0748063

FILED *Ely*  
Secretary of State / *ASK*  
State of California

1933982

NOV 12 2013

NCTO:

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
HEALTHATION, INC.  
a California Corporation

IPC EFFECTIVE  
DATE  
NOV 18 2013

The undersigned hereby certify that:

**ONE:** They are the duly elected and acting President and Chief Financial Officer, respectively, of Healthation, Inc., a California corporation.

**TWO:** The Amended and Restated Articles of Incorporation filed on May 23, 2013, of this corporation are hereby further amended and restated to read as follows:

I.

The name of this corporation is Aldera, Inc. (the "*Company*").

II.

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

A. The Company is authorized to issue two classes of stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*." The Common Stock shall have no par value, and the Preferred Stock shall have no par value. The total number of shares which the Company is authorized to issue is 376,095,744 shares. The number of shares of Common Stock authorized to be issued is 250,000,000 shares. The number of shares of Preferred Stock authorized to be issued is 126,095,744 shares.

B. 54,572,077 of the authorized shares of Preferred Stock are hereby designated "*Series A Preferred Stock*" and 71,523,667 of the authorized shares of Preferred Stock are hereby designated "*Series B Preferred Stock*" (the Series A Preferred Stock and the Series B Preferred Stock, collectively, the "*Series Preferred*").

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

I. DIVIDEND RIGHTS.

(a) Holders of Series Preferred shall be entitled to receive, on a *pari passu* basis with other holders of Series Preferred and in preference to the holders of Common Stock,

out of any assets at the time legally available therefor, dividends at the rate of 8% of the applicable Liquidation Price (as defined below) per annum on each outstanding share of Series Preferred. Such dividends shall accrue from day to day commencing on the Original Issue Date (as defined below), whether or not declared by the Board of Directors of the Company (the "*Board*"), and shall be cumulative to the extent not actually paid; *provided, however*, that such dividends shall be payable only when, as and if declared by the Board except in the case of redemption of the Series B Preferred Stock pursuant to Section 5(a)(i) below pursuant to which accrued dividends shall be paid regardless of declaration by the Board. No Holder of Series Preferred shall be entitled to receive any dividend with respect to such Series Preferred that accrued on or prior to the filing date hereof but was not declared on or prior to the filing date hereof.

(b) (A) The "*Liquidation Price*" of the Series A Preferred Stock shall be \$0.5681, as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof), and (B) the "*Liquidation Price*" of the Series B Preferred Stock shall be the Original Issue Price of the Series B Preferred Stock.

(c) The "*Original Issue Price*" of the Series A Preferred Stock shall be \$1.00, and the "*Original Issue Price*" of the Series B Preferred Stock shall be \$0.197 (in each case, as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof).

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

(i) acquisitions of Common Stock by the Company pursuant to agreements that permit the Company to repurchase such shares upon termination of services to the Company, provided that such shares are repurchased at no more than cost;

(ii) acquisitions of Common Stock in exercise of the Company's right of first refusal to repurchase such shares; or

(iii) distributions to holders of Common Stock in accordance with Section 3.

(e) In the event that, after all declared but unpaid dividends, if any, as set forth in Section 1(a) above on the Series Preferred shall have been paid, dividends are paid on any share of Common Stock, the Company shall pay an additional dividend on all outstanding shares of Series Preferred 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.

(f) The provisions of Section 1(d) and 1(e) shall not apply to a dividend payable solely in Common Stock to which the provisions of Section 4(f) hereof are applicable, or

any repurchase of any outstanding securities of the Company that is approved by (i) the Board and (ii) the Series Preferred as may be required by these Amended and Restated Articles of Incorporation.

(g) A distribution to the Company's shareholders may be made without regard to the preferential dividends arrears amount or any preferential rights amount (each as determined under the California Corporations Code) in connection with the Company's repurchase of shares upon termination of employment or service as a consultant or director to the Company.

## 2. VOTING RIGHTS.

(a) **General Rights.** Each holder of shares of the 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 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Common Stock and shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the Company. Except as otherwise provided herein or as required by law, the Series Preferred shall vote on an as-if-converted to Common Stock basis together with the Common Stock at any annual or special meeting of the shareholders 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 B Preferred Stock and Series Preferred.** For so long as any shares of Series B Preferred Stock or Series Preferred remain outstanding, in addition to any other vote or consent required herein or by law, the approval of the Requisite Holders (as described below) shall be necessary for effecting or validating the following actions (whether by merger, recapitalization or otherwise), and any such act or transaction entered into without such consent or vote shall be null and void *ab initio* and of no force or effect (unless subsequently ratified by the Requisite Holders):

(i) Any amendment, alteration, repeal or waiver of any provision of the Articles of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Determination) that alters, changes or otherwise affects the voting or other powers, preferences, or other special rights, privileges or restrictions of the Series Preferred or any series thereof;

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

(iii) Any authorization 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 or any series thereof in right of redemption, liquidation preference, voting or dividend rights or any increase in the authorized or designated number of any such class or series;

(iv) Any declaration of dividends or other distributions with respect to Common Stock or any redemption or repurchase of any equity securities of the Company (including warrants, options and other rights to acquire equity securities), except for acquisitions of Common Stock by the Company permitted by Section 1(d)(i), (ii) and (iii) hereof and redemptions required by Section 5 hereof;

(v) Any agreement by the Company or its shareholders regarding the merger or consolidation of the Company with one or more other entities or the sale of all or substantially all of the assets of the Company (including without limitation an Asset Transfer or Acquisition (each as defined in Section 3 hereof));

(vi) Any voluntary dissolution or liquidation of the Company;

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

(viii) The acquisition by the Company of another entity or business or the acquisition by the Company of any material assets outside the ordinary course of the Company's business;

(ix) Any increase in the number of shares of Common Stock reserved for issuance 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 similar arrangements;

(x) The hiring or termination of the Company's Chief Executive Officer;

(xi) Any authorization of a transaction or event, or series of related transactions or events, that involves the incurrence of any indebtedness in an aggregate amount in excess of \$500,000; or

(xii) Any material change in the nature of the Company's business.

Any approval or consent required by the "*Requisite Holders*" in these Amended and Restated Articles of Incorporation shall mean the affirmative vote or written consent of each of the following, voting separately: (1) the holders of at least 66 2/3% of the outstanding Series B Preferred Stock, voting together as a single class on an as-if-converted to Common Stock basis and (2) the holders of at least 66 2/3% of the outstanding Series Preferred, voting together as a single class on an as-if-converted to Common Stock basis.

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

(i) For so long as any shares of Series B Preferred Stock remain outstanding, the holders of Series B Preferred Stock, voting as a separate class, shall be entitled to (x) elect two (2) members of the Board at each meeting or pursuant to each consent of the Company's shareholders 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 and (y) appoint one (1) board observer.

(ii) For so long as any shares of Series A Preferred Stock remain outstanding, the holders of Series A Preferred Stock, voting as a separate class, shall be entitled to elect three (3) members of the Board at each meeting or pursuant to each written consent of the Company's shareholders 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 and Series Preferred, voting together as a single class on an as-if-converted to Common Stock basis, shall be entitled to elect two (2) members of the Board at each meeting or pursuant to each written consent of the Company's shareholders 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 to Common Stock basis, shall be entitled to, and shall elect the then-serving Chief Executive Officer of the Company to the Board.

(v) Every shareholder entitled to vote at an election for directors may cumulate such shareholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such shareholder's shares are otherwise entitled, or distribute the shareholder's votes on the same principle among as many candidates as such shareholder desires. No shareholder, however, shall be entitled to so cumulate such shareholder's votes unless (A) the names of such candidate or candidates have been placed in nomination prior to the voting and (B) the shareholder has given notice at the meeting, prior to the voting, of such shareholder's intention to cumulate such shareholder's votes. If any shareholder has given proper notice to cumulate votes, all shareholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

### 3. LIQUIDATION RIGHTS.

(a) Upon any liquidation, dissolution, Acquisition, Asset Transfer or winding up of the Company, whether voluntary or involuntary (a "*Liquidation Event*"), before any distribution or payment shall be made to the holders of Series A Preferred Stock or Common Stock, the holders of Series B Preferred Stock shall be entitled to be paid out of the assets of the Company legally available for distribution (or the consideration received by the Company or its shareholders in an Acquisition or Asset Transfer (as defined below)), for each share of Series B

Preferred Stock held by them, an amount per share of Series B Preferred Stock equal to the Liquidation Price of the Series B Preferred Stock plus all declared but unpaid dividends on the Series B Preferred Stock, if any. If, upon any such Liquidation Event, the assets of the Company shall be insufficient to make payment in full to all holders of Series B Preferred Stock of the liquidation preference set forth in this Section 3(a) (the "*Series B Liquidation Preference*"), then such assets (or consideration) shall be distributed among the holders of Series B Preferred Stock at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) Upon any Liquidation Event, after payment in full of the Series B Liquidation Preference and before any distribution or payment shall be made to the holders of Common Stock, the holders of Series A Preferred Stock shall be entitled to be paid out of the assets of the Company legally available for distribution (or the consideration received by the Company or its shareholders in an Acquisition or Asset Transfer), for each share of Series A Preferred Stock held by them, an amount per share of Series A Preferred Stock equal to the Liquidation Price of the Series A Preferred Stock plus all declared but unpaid dividends on the Series A Preferred Stock, if any. If, upon any such Liquidation Event and after payment of the Series B Liquidation Preference, the remaining assets of the Company shall be insufficient to make payment in full to all holders of Series A Preferred Stock of the liquidation preference set forth in this Section 3(a) (the "*Series A Liquidation Preference*"), then such assets (or consideration) shall be distributed among the holders of Series A Preferred Stock at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

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

(d) An Asset Transfer or Acquisition shall be deemed a Liquidation Event for purposes of this Section 3.

(i) For the purposes of this Section 3: (A) "*Acquisition*" shall mean (1) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization in one transaction of a series of related transactions, other than any such consolidation, merger or reorganization in which the shareholders 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 (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization; or (2) 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 related 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 (B) "*Asset Transfer*" shall mean a sale, lease, exclusive license or other disposition, in one transaction or a series of related transactions, of all or substantially all of the assets of the Company.

(ii) In any Acquisition or Asset Transfer, if the consideration to be received is securities of a corporation or other property other than cash, its value will be deemed its fair market value as determined in good faith by the Board on the date such determination is made.

(iii) The Company shall not have the power to effect an Acquisition or Asset Transfer unless the definitive agreement for such transaction provides that the consideration payable to the shareholders of the Company in connection therewith shall be allocated among the holders of capital stock of the Company in accordance with this Section 3.

(e) In the event of an Asset Transfer, if the Company does not effect a dissolution of the Company within 120 days after such Asset Transfer, then (i) the Company shall send a written notice to each holder of Series Preferred no later than the 120th day after the Asset Transfer advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Series Preferred, and (ii) if the Requisite Holders so request in a written instrument delivered to the Company not later than 150 days after such Asset Transfer, the Company shall use the consideration received by the Company in such Asset Transfer (net of any retained liabilities associated with the assets sold, leased, licensed or otherwise disposed of, as determined in good faith by the Board), together with any other assets of the Company available for distribution to its shareholders, all to the extent permitted by California law governing distributions to shareholders (the "*Available Proceeds*"), on the 180th day after such Asset Transfer, to redeem all outstanding shares of Series Preferred at a price per share equal to, in the case of Series A Preferred Stock, the Series A Liquidation Preference, and in the case of Series B Preferred Stock, the Series B Liquidation Preference. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Series Preferred, the Company shall ratably redeem each holder's shares of Series Preferred to the fullest extent of such Available Proceeds, and shall redeem the remaining shares as soon as it may lawfully do so under California law governing distributions to shareholders. The provisions of Section 5 shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Series Preferred pursuant to this Section 3(e). Prior to the distribution or redemption provided for in this Section 3(e), the Company shall not expend or dissipate the consideration received for such Asset Transfer, except to discharge expenses incurred in connection with such Asset Transfer.

(f) In the event of an Acquisition or Asset Transfer, if any portion of the consideration payable to the shareholders of the Company is placed into escrow and/or is payable to the shareholders of the Company subject to contingencies, the definitive agreement for such transaction shall provide that (a) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "*Initial Consideration*") shall be allocated among the holders of capital stock of the Company in accordance with Sections 3(a), (b) and (c) as if the Initial Consideration were the only consideration payable in connection with such Acquisition or

Asset Transfer and (b) any additional consideration which becomes payable to the shareholders of the Company upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Company in accordance with Sections 3(a), (b) and (c) after taking into account the previous payment of the Initial Consideration as part of the same transaction.

#### 4. 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 4, 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 Series Preferred Conversion Rate (as defined below) then in effect (determined as provided in Section 4(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 Preferred (the "*Series Preferred Conversion Rate*") shall be the quotient obtained by dividing the applicable Original Issue Price of the Series Preferred by the applicable Series Preferred Conversion Price (as defined below), calculated as provided in Section 4(c).

(c) **Series Preferred Conversion Price.** The conversion price for the Series Preferred shall initially be (i) \$0.68266 in the case of the Series A Preferred (the "*Series A Preferred Conversion Price*"), and (ii) the Original Issue Price of the Series B Preferred in the case of the Series B Preferred (the "*Series B Preferred Conversion Price*", and with the Series A Preferred Conversion Price, each the applicable "*Series Preferred Conversion Price*"). Such initial Series Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 4. All references to the Series Preferred Conversion Price herein shall mean the Series Preferred Conversion Price as so adjusted.

(d) **Mechanics of Optional Conversion.** Each holder of Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, 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 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 therefore, in Common Stock (at the Common Stock's fair market value determined by the Board as of the date of such conversion), all declared but unpaid dividends on the shares of Series Preferred being converted, if any, 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.

(e) **Adjustment for Stock Splits and Combinations.** If at any time or from time to time on or after May 28, 2013 (the "*Original Issue Date*") the Company effects a subdivision of the outstanding Common Stock without a corresponding subdivision of the Preferred Stock, the Series Preferred Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the 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 Series Preferred Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) **Adjustment for Common Stock Dividends and Distributions.** If at any time or from time to time 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 the holders of Preferred Stock, the Series Preferred Conversion Price then in effect shall be decreased as of the time of such issuance, as provided below:

(i) The Series Preferred Conversion Price shall be adjusted to a price determined by multiplying the Series Preferred Conversion Price 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;

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 (1) the number of shares of Common Stock outstanding, (2) 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 (3) the number of shares of Common Stock that 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) 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 Price shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date; and

(iii) If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series Preferred Conversion Price shall be adjusted pursuant to this Section 4(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 as defined in Section 3 or a subdivision or combination of shares or stock dividend or distribution provided for elsewhere in this Section 4), in any such event each share of Series Preferred shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property that a holder of the number of shares of Common Stock of the Company issuable upon conversion of one share of Series Preferred immediately prior to such recapitalization, reclassification, merger, consolidation or other transaction would have been entitled to receive pursuant to such transaction, 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 4 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Series Preferred Conversion Price 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 4(h) to have issued or sold, Additional Shares of Common Stock (as defined below), other than as provided in Section 4(e), 4(f) or 4(g) above, for an Effective Price (as defined below) less than the then effective Series B Preferred Conversion Price (a "*Qualifying Dilutive Issuance*"), then and in each such case, the then existing Series Preferred 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 the Series Preferred Conversion Price in effect immediately prior to such issuance or sale by a fraction:

(A) the numerator of which shall be (1) the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale, plus (2) the number of shares of Common Stock that the Aggregate Consideration (as defined below) received or deemed received by the Company (in exchange for the total number

of Additional Shares of Common Stock so issued) would purchase at such then-existing Series Preferred Conversion Price, 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 (1) the number of shares of Common Stock outstanding, (2) 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 (3) the number of shares of Common Stock that 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 Price in an amount less than 1% of the Series Preferred Conversion Price then in effect. Any adjustment otherwise required by this Section 4(h) that is not required to be made due to the first sentence of this subsection (ii) shall be included in any subsequent adjustment to the Series Preferred Conversion Price. Any adjustment required by this Section 4(h) shall be rounded to the first decimal for which such rounding represents less than 1% of the Series Preferred Conversion Price in effect after such adjustment.

(iii) For the purpose of making any adjustment required under this Section 4(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, 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, the fair market 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 that covers both, 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 4(h), if the Company issues or sells (x) Preferred Stock or other stock, options, warrants, purchase rights or other securities exercisable for or 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 (including any Additional Shares of Common Stock deemed issued pursuant to operation of the provisions of Section 4(i)) is less than the Series Preferred Conversion Price, 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 (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) 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 Series Preferred 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, the Series Preferred Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series Preferred Conversion Price that 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 Conversion Price of the Series Preferred required under this Section 4(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 4(h) (including shares of Common Stock subsequently reacquired or retired by the Company) other than:

(A) shares of Common Stock issued as a dividend or distribution on the Series Preferred;

(B) up to an aggregate of 37,615,716 shares of Common Stock or Convertible Securities issued before or after the Original Issue Date to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary pursuant to stock option plans or other arrangements that are approved by the Board (provided, however, that the foregoing securities shall not include shares of Common Stock or Convertible Securities issued pursuant to the Purchase Agreement);

(C) shares of Common Stock issued pursuant to the exercise or conversion of Convertible Securities outstanding as of the Original Issue Date (provided, however, that the foregoing securities shall not include shares of Common Stock or Convertible Securities issued pursuant to the Purchase Agreement);

(D) 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 Requisite 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 or lending institution approved by the Requisite Holders;

(F) shares of Common Stock or Convertible Securities issued pursuant to the Corporation's Series B Preferred Stock Purchase Agreement dated on or about May 28, 2013; and

(G) shares of Common Stock or Convertible Securities that the Requisite Holders elect in writing to exclude from the definition of "*Additional Shares of Common Stock*" for purposes of this Section 4.

References to Common Stock in the clauses of this subsection (v) above shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(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 4(h), into the Aggregate Consideration received, or deemed to have been received by the Company for such issue under this Section 4(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.

(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 Series Preferred Conversion Price shall be reduced to the Series Preferred 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 the Series Preferred Conversion Price 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 4, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and shall, upon request, prepare a certificate showing such adjustment or readjustment, 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 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 Series Preferred Conversion Price 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 that at the time would be received upon conversion of the Series Preferred. Failure to 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 or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer, or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series Preferred at least 10 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 Requisite 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) 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) Each share of Series Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series Preferred Conversion Price, (A) at any time upon the approval of the Requisite Holders, or (B) immediately upon the closing of a firmly 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 \$0.985 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) and (ii) the Company's shares have been listed for trading on the New York Stock Exchange, NASDAQ Global Select Market or NASDAQ Global Market. Upon such automatic conversion, all declared but unpaid dividends, if any, shall be paid in accordance with the provisions of Section 4(d).

(ii) Upon the occurrence of either of the events specified in Section 4(k)(i) 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, 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 all declared but unpaid dividends, if any, shall be paid in accordance with the provisions of Section 4(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 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by electronic transmission in compliance with the applicable provisions of the California Corporations Code, (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one 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.

(p) **Effect of Conversion.** All shares of Series Preferred which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the time of conversion, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Section 4(d) and to receive payment of any dividends declared but unpaid thereon. Any shares of Series Preferred so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Company may thereafter take such appropriate action (without the need for shareholder action) as may be necessary to reduce the authorized number of shares of Series Preferred accordingly.

## 5. REDEMPTION.

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

(i) At any time beginning on the fifth (5<sup>th</sup>) anniversary of the Original Issue Date, the holders of at least 66 2/3% of the outstanding Series B Preferred Stock, voting together as a separate class (the "*Series B Requisite Holders*"), may require the Company, to the extent it may lawfully do so, to redeem all of the then outstanding Series B Preferred Stock on the date designated by the Series B Requisite Holders (the "*Series B Redemption Date*"); *provided* that the Company shall receive at least sixty (60) days prior to such Series B Redemption Date written notice of such election of the Series B Preferred Stock (the "*Series B Redemption Election Date*"). The Company shall effect such redemption on the Series B Redemption Date by paying in cash in exchange for the shares of Series B Preferred Stock to be redeemed on such Series B Redemption Date a sum equal to the greater of (A) the applicable Liquidation Price per share of Series B Preferred Stock plus accrued but unpaid dividends (regardless of whether or not such dividends have been declared), with respect to such shares or (B) the fair market value of such shares of Series B Preferred Stock as of the date of the Series B Redemption Election Date, as determined by an independent appraisal of such shares performed by a qualified party approved by the Board (which independent appraisal shall be at the Company's expense) and shall be commissioned not more than 30 days following the date of written notice of the Series B Requisite Holders to elect redemption hereunder. The total amount to be paid for the Series B Preferred Stock is hereinafter referred to as the "*Series B Redemption Price*." Shares subject to redemption pursuant to this Section 5(a)(i) shall be redeemed from each holder of Series B Preferred Stock on a pro rata basis, based on the number of shares of Series B Preferred Stock then held.

(ii) At any time beginning on the fifth (5<sup>th</sup>) anniversary of the Original Issue Date and ending on the date that is three months thereafter, the holders of at least a majority of the outstanding Series A Preferred Stock, voting together as a separate class (the "*Series A Requisite Holders*"), may elect to require the Company, to the extent it may lawfully do so, to redeem all of the then outstanding Series A Preferred Stock in two installments; *provided however* that notwithstanding any other provision herein, redemption of any Series A Preferred Stock under this Section 5(a)(ii) may occur only if all of the Series B Preferred Stock have been redeemed in full pursuant to Section 5(a)(i) above. The first installment of such redemption shall occur on the date that is six months after the date upon which the Series A Requisite Holders approve the redemption as set forth in the immediately preceding sentence (such date upon which the Series A Requisite Holders approve the redemption as set forth in the immediately preceding sentence, the "*Early-Stage Redemption Election Date*," and the notice by which the Series A Requisite Holders approve the redemption as set forth in the immediately preceding sentence, the "*Early-Stage Redemption Notice*") and the second installment of such redemption shall occur on the date that is 18 months after the Early-Stage Redemption Election Date (each of such six month and 18 month dates, an "*Early-Stage Redemption Date*"). The Company shall effect such redemptions on each Early-Stage Redemption Date by paying in cash in exchange for the shares of Series A Preferred Stock to be redeemed on such Early Stage Redemption Date a sum equal to the greater of (A) the applicable Liquidation Price per share of Series A Preferred Stock plus declared but unpaid dividends, if any, with respect to such shares or (B) the fair market value of such shares of Series A Preferred Stock as of the Early-Stage Redemption Election Date, as determined by the Board after obtaining an independent appraisal

of such shares performed by a qualified party (which independent appraisal shall be at the Company's expense) and shall be commissioned not more than 30 days following the Early-Stage Redemption Election Date. Following receipt of an Early-Stage Redemption Notice, the Company shall apply all of its assets to any such redemption, and to no other corporate purpose, except to the extent prohibited by California law governing distributions to shareholders. The number of shares of Series A Preferred Stock and that the Company shall be required to redeem on any one Early-Stage Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of Series A Preferred Stock outstanding immediately prior to such Early-Stage Redemption Date by (B) the number of remaining Early-Stage Redemption Dates (including the Early-Stage Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 5(a)(ii) shall be redeemed from each holder of Series A Preferred Stock on a pro rata basis, based on the number of shares of Series A Preferred Stock then held.

(iii) At any time from and after the tenth (10<sup>th</sup>) anniversary of the Original Issue Date, the Series A Requisite Holders, may elect to require the Company, to the extent it may lawfully do so, to redeem all of the then outstanding Series A Preferred Stock, if any, in two installments; *provided however* that notwithstanding any other provision herein, redemption of any Series A Preferred Stock under this Section 5(a)(iii) may occur only if all of the Series B Preferred Stock have been redeemed in full pursuant to Section 5(a)(i) above. The first installment of such redemption shall occur on the date that is six months after the date upon which the Series A Requisite Holders approve the redemption as set forth in the immediately preceding sentence (such date upon which the Series A Requisite Holders approve the redemption as set forth in the immediately preceding sentence, the "*Late-Stage Redemption Election Date*" and, together with the Early-Stage Redemption Election Date, the "*Redemption Election Dates*" and each a "*Redemption Election Date*," and the notice by which the Series A Requisite Holders approve the redemption as set forth in the immediately preceding sentence, the "*Late-Stage Redemption Notice*") and the second installment of such redemption shall occur on the date that is 18 months after the Late-Stage Redemption Election Date (each of such six month and 18 month dates, a "*Late-Stage Redemption Date*" and, together with the Early-Stage Redemption Dates, the "*Redemption Dates*", the "*Series B Redemption Date*" and each a "*Redemption Date*"). The Company shall effect such redemptions on each Late-Stage Redemption Date by paying in cash in exchange for the shares of Series A Preferred Stock to be redeemed on such Late-Stage Redemption Date a sum equal to the greater of (A) the applicable Liquidation Price per share of Series A Preferred Stock plus declared but unpaid dividends, if any, with respect to such shares or (B) the fair market value of such shares of Series A Preferred Stock as of the Late-Stage Redemption Election Date, as determined by an independent appraisal of such shares performed by a qualified party approved by the Board (which independent appraisal shall be at the Company's expense) and shall be commissioned not more than 30 days following the Late-Stage Redemption Election Date. Following receipt of a Late-Stage Redemption Notice, the Company shall apply all of its assets to any such redemption, and to no other corporate purpose, except to the extent prohibited by California law governing distributions to shareholders. The number of shares of Series A Preferred Stock that the Company shall be required to redeem on any one Late-Stage Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of Series A Preferred Stock outstanding immediately prior to such Late-Stage Redemption Date by (B) the number of

remaining Late-Stage Redemption Dates (including the Late-Stage Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 5(a)(iii) shall be redeemed from each holder of Series A Preferred Stock on a pro rata basis, based on the number of shares of Series A Preferred Stock then held.

(iv) The total amount to be paid for the applicable Series Preferred on any given Redemption Date, including the Series B Redemption Price in the case of the Series B Preferred Stock, is hereinafter referred to as the "*Redemption Price*." At least 30 days but no more than 60 days prior to the applicable Redemption Date, the Company shall send a notice (a "*Redemption Notice*") to all holders of Series Preferred to be redeemed at such Redemption Date 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, 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 applicable 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 5(b) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section 4 hereof no later than 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 5(b) remaining unclaimed at the expiration of one (1) year 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 4) for such Series Preferred shall terminate as to the shares designated for redemption at the close of business on the applicable Redemption Date, unless default is made in payment of the Redemption Price.

(e) In the event the Company fails to timely pay the full amounts owed pursuant to this Section 5 following any applicable Redemption Date on the dates required by this Section 5, the dividend rate under Section 1(a) shall automatically increase to 12% as of such date the Company failed to timely pay any amount owed pursuant to this Section 5 and continue until the Company pays the full amounts owed under this Section 5, and the Company shall become obligated to redeem the Series Preferred applicable to such Redemption Date in full.

#### 6. NO REISSUANCE OF SERIES PREFERRED.

Any share or shares of Series Preferred redeemed, purchased, converted or exchanged by the Company shall be cancelled and retired and shall not be reissued or transferred.

#### IV.

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

B. The Company is authorized to provide, through bylaw provisions, agreements with the agents, shareholder resolutions or otherwise, indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the Company and its shareholders in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code.

C. If, after the effective date of this Article, California law is amended in a manner that permits a company to limit the monetary or other liability of its directors, or authorizes indemnification of, or advancement of such defense expenses to, its directors or other persons, in any such case to a greater extent than is permitted on such effective date, the references in this Article to "California law" shall to that extent be deemed to refer to California law as so amended.

D. Any repeal or modification of this Article IV shall only be prospective and shall not affect the rights or protections or increase the liability of any director under this Article IV in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

E. To the full 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, any director of the Company who is not an employee of the Company or any of its subsidiaries, (collectively, "Covered Persons"), unless in either case 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.

V.

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 shareholders 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 that shall constitute the whole Board shall be fixed by the Board within the range provided in the Bylaws, subject to any restrictions which may be set forth in these Articles.

B. The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Company, subject to any restrictions that may be set forth in these Articles. The shareholders shall also have the power to adopt, amend or repeal the Bylaws of the Company, subject to any restrictions that may be set forth in these Articles.

\* \* \* \*

**THREE:** The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the Board of Directors of this corporation.

**FOUR:** The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Sections 902 and 903 of the California Corporations Code. The total number of outstanding shares entitled to vote with respect to the foregoing amendment was 51,513,284 shares of Common Stock, 54,572,077 shares of Series A Preferred Stock, and 9,594,733 shares of Series B Preferred Stock. The number of shares voting in favor of the foregoing amendment equaled or exceeded the vote required. The percentage vote required was more than (i) 50% of the outstanding shares of Common Stock, voting separately as a class, (ii) 50% of the outstanding shares of Common Stock and Preferred Stock, voting together as a single class on an as-if-converted to Common Stock basis, and (iii) 50% of the outstanding shares of Series B Preferred Stock.

**FIVE:** This Amended and Restated Articles of Incorporation of Healthation, Inc. shall have a future effective date of November 18, 2013 pursuant to California Corporations Code Section 110(c).

[SIGNATURE PAGE FOLLOWS]

A0748063

The undersigned, Darin LeGrange and David J. Keane, the President and Chief Financial Officer, respectively, of Healthation, Inc., declare under penalty of perjury under the laws of the State of California that the matters set out in the foregoing certificate are true and correct of our own knowledge.

Date: November 12, 2013.



\_\_\_\_\_  
Darin LeGrange, President

\_\_\_\_\_  
David J. Keane, Chief Financial Officer

TRADEMARK

REEL: 005324 FRAME: 0688



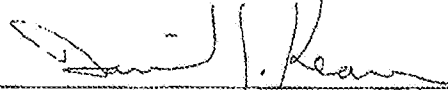
A0748063

The undersigned, Darin LeGrange and David J. Keane, the President and Chief Financial Officer, respectively, of Healthation, Inc., declare under penalty of perjury under the laws of the State of California that the matters set out in the foregoing certificate are true and correct of our own knowledge.

Date: November 12, 2013.

---

Darin LeGrange, President



---

David J. Keane, Chief Financial Officer