

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

EPAS ID: PAT4502240

SUBMISSION TYPE:	NEW ASSIGNMENT	
NATURE OF CONVEYANCE:	CHANGE OF NAME	
CONVEYING PARTY DATA		
	Name	Execution Date
	COAXIS, INC.	01/08/2014
RECEIVING PARTY DATA		
Name:	VIEWPOINT, INC.	
Street Address:	1515 SE WATER AVENUE, SUITE 300	
City:	PORTLAND	
State/Country:	OREGON	
Postal Code:	97214	
PROPERTY NUMBERS Total: 1		
Property Type	Number	
Application Number:	15443844	
CORRESPONDENCE DATA		
Fax Number:	(312)862-2200	
<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>		
Phone:	3128622000	
Email:	rob.soneson@kirkland.com	
Correspondent Name:	ROB SONESON	
Address Line 1:	300 N LASALLE	
Address Line 2:	KIRKLAND & ELLIS LLP	
Address Line 4:	CHICAGO, ILLINOIS 60654	
ATTORNEY DOCKET NUMBER:	13826-17-RFS	
NAME OF SUBMITTER:	ROB SONESON	
SIGNATURE:	/rsoneson/	
DATE SIGNED:	07/13/2017	
Total Attachments: 30		
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**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
COAXIS, INC.**

Coaxis, Inc, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "*Corporation*"), DOES HEREBY CERTIFY:

FIRST: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of Delaware on January 29, 2010.

SECOND: The name of the Corporation is "Coaxis, Inc.", and upon the effectiveness of this Second Amended and Restated Certificate of Incorporation, the name of the Corporation shall be "Viewpoint, Inc."

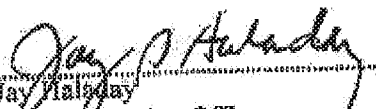
THIRD: The Second Amended and Restated Certificate of Incorporation of the Corporation in the form attached hereto as Exhibit A has been duly adopted in accordance with the provisions of Sections 245 and 242 of the General Corporation Law of the State of Delaware by the directors and stockholders of the Corporation.

FOURTH: The Second Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and is hereby incorporated herein by this reference.

IN WITNESS WHEREOF, COAXIS, INC. has caused this Second Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this 31st day of October 2013.

COAXIS, INC.

By


Jay Halsday
Chief Executive Officer

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PATENT

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SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
VIEWPOINT, INC.

I.

The name of the Corporation is VIEWPOINT, INC.

II.

The address of the registered office of this Corporation in the State of Delaware, County of Kent is 160 Greentree Drive Suite 101, Dover, Delaware 19904, and the name of the registered agent of this Corporation in the State of Delaware at such address is National Registered Agents, Inc.

III.

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

IV.

The Corporation is authorized to issue two classes of stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*." The total number of shares which the Corporation is authorized to issue is One Hundred Thirty Nine Million Four Hundred Ninety Eight Thousand One Hundred Seventy (139,498,170) shares, Sixty Six Million Sixty Seven Thousand Eight Hundred Twelve (66,067,812) shares of which shall be Common Stock (the "*Common Stock*") and Seventy Three Million Four Hundred Thirty Thousand Three Hundred Fifty Eight (73,430,358) shares of which shall be Preferred Stock (the "*Preferred Stock*"). The Common Stock and the Preferred Stock shall each have a par value of \$0.001 per share.

The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote (voting together as a single class on an as-if converted to Common Stock basis).

Of the authorized shares of Preferred Stock (i) Three Million Two Hundred Twenty Five Thousand Five Hundred Eighty Six (3,225,586) are hereby designated "*Series A-1 Convertible Preferred Stock*" (the "*Series A-1 Convertible Preferred*"), (ii) Three Million Two Hundred Twenty Five Thousand Five Hundred Eighty Six (3,225,586) are hereby designated "*Series A-1 Redeemable Preferred Stock*" (the "*Series A-1 Redeemable Preferred*"), (iii) Twenty Eight Million Four Hundred Eighty Nine Thousand Five Hundred Ninety Three (28,489,593) are hereby designated "*Series B Convertible Preferred Stock*" (the "*Series B Convertible Preferred*") and together with the Series A-1 Convertible Preferred, the "*Convertible Preferred Stock*"), (iv) Twenty Eight Million Four Hundred Eighty Nine Thousand Five Hundred Ninety

Three (28,489,593) are hereby designated "*Series B Redeemable Preferred Stock*" (the "*Series B Redeemable Preferred*") and together with the Series A-1 Redeemable Preferred, the "*Redeemable Preferred Stock*") and (v) Ten Million (10,000,000) are hereby designated "*Series A Convertible Preferred Stock*" (the "*Series A Preferred*").

The voting powers, designations, preferences, powers and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions of each class of capital stock of the Corporation, shall be as provided in this Article IV.

A. CONVERTIBLE PREFERRED STOCK

1. **DESIGNATION.** Of the Corporation's Preferred Stock, a total of 28,489,593 shares have been designated as a class known as Series B Convertible Preferred and a total of 3,225,586 shares have been designated as a class known as Series A-1 Convertible Preferred.

2. **DIVIDEND RIGHTS.** From and after the date of the issuance of any shares of Convertible Preferred Stock, dividends will be paid when and if declared by the Board of Directors out of funds legally available therefore at the rate per annum of \$0.168483 per share and, if not so declared, such amount shall accumulate from day to day on such shares of Series B Convertible Preferred (the "*Series B CPS Accruing Dividends*") and dividends will be paid when and if declared by the Board of Directors out of funds legally available therefore at the rate per annum of \$0.155980 per share and, if not so declared, such amount shall accumulate from day to day on such shares of Series A-1 Convertible Preferred (the "*Series A-1 CPS Accruing Dividends*") and together with the Series B CPS Accruing Dividends, the "*CPS Accruing Dividends*"). The amount of the CPS Accruing Dividends shall be subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the applicable series of Convertible Preferred Stock. Any CPS Accruing Dividends declared by the Board of Directors shall be paid to the holders of Convertible Preferred Stock on a pari passu basis. In addition to the CPS Accruing Dividends, the holders of outstanding shares of Convertible Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available therefor, dividends at such time and in such amounts, if any, as are received by the holders of Common Stock pro rata based on the number of shares of Common Stock held by each, determined on an as-if converted basis (assuming full conversion of all such Convertible Preferred Stock into Common Stock pursuant to Section A.5 hereof) as of the record date with respect to the declaration of such dividends (the "*CPS Common Dividends*"). The CPS Common Dividends shall not be cumulative and shall not reduce the amount of the CPS Accruing Dividends.

3. VOTING RIGHTS.

(a) **General Rights.** Each outstanding share of Convertible Preferred Stock shall be entitled to a number of votes equal to the number of shares of Common Stock into which such share of Convertible Preferred Stock is then convertible (assuming conversion of such shares of Convertible Preferred Stock into shares of Common Stock pursuant to Section A.5 hereof) as of the record date for the vote or written consent of stockholders, if applicable. Each holder of outstanding shares of Convertible Preferred Stock shall be entitled to notice of any

stockholders' meeting in accordance with the Bylaws of the Corporation. Each holder of outstanding shares of Convertible Preferred Stock shall vote with holders of the Common Stock, voting together as a single class on an as-if converted basis (assuming full conversion of all such Convertible Preferred Stock into Common Stock pursuant to Section A.5 hereof), upon all matters submitted to a vote of stockholders, including elections of the Board of Directors but excluding those matters required to be submitted to a class or series vote pursuant to the terms hereof (including, without limitation, Section A.8) or by applicable law.

(b) Election of Board of Directors.

(i) Without limiting the effect of any additional rights they may have under Section A.3(a), the holders of outstanding shares of Series A-1 Convertible Preferred, voting together as a separate class, shall be entitled to elect one (1) member (the "*Series A-1 Director*") of the board of directors of the Corporation (the "*Board of Directors*") and the holders of outstanding shares of Series B Convertible Preferred, voting together as a separate class, shall be entitled to elect two (2) members (the "*Series B Directors*") and together with the Series A-1 Director, the "*CPS Directors*") of the Board of Directors. Except as provided in clause (iv) below, such CPS Directors shall be elected by a plurality vote, with the elected candidates being the candidates receiving the greatest number of affirmative votes of outstanding shares of the applicable series of Convertible Preferred Stock. In any election of CPS Directors, each holder of the applicable series of Convertible Preferred Stock will be entitled to cast one vote for or against each candidate with respect to each share of such series of Convertible Preferred Stock held by such holder, with votes cast against such applicable candidates and votes withheld having no legal effect. The holders of outstanding shares of Series A-1 Convertible Preferred and Series B Convertible Preferred shall, voting as separate series, be entitled to remove the Series A-1 Director or any Series B Director, respectively, with or without cause. The election and removal of such CPS Directors shall occur (i) at the annual meeting of holders of capital stock of the Corporation, (ii) at any special meeting of holders of capital stock of the Corporation if such meeting is called for the purpose of electing or removing members of the Board of Directors, (iii) at any special meeting of holders of the applicable series of Convertible Preferred Stock called by holders of not less than a majority of the outstanding shares of such series of Convertible Preferred Stock (voting together as a separate class) or (iv) by the written consent of holders of not less than a majority of the outstanding shares of the applicable series of Convertible Preferred Stock (voting together as a separate class).

(ii) If at any time when any share of Series A-1 Convertible Preferred or Series B Convertible Preferred is outstanding any such Series A-1 Director or Series B Director, respectively and as the case may be, should cease to be a member of the Board of Directors for any reason, the vacancy shall be filled by the vote or written consent of only the holders of the applicable series of outstanding shares of Convertible Preferred Stock in the manner and on the basis specified above or as otherwise provided by law. The holders of outstanding shares of Convertible Preferred Stock shall also be entitled to vote in the election of all other Directors of the Corporation (other than the Common Directors) together with holders of all other shares of the Corporation's outstanding capital stock entitled to vote thereon, voting as a single class, with each outstanding share of Convertible Preferred Stock entitled to the number of votes specified in Section A.3(b) hereof. The holders of outstanding shares of Convertible Preferred Stock may, in their sole discretion, determine not to elect one or more

Directors as provided herein from time to time, and during any such period the Board of Directors shall not be deemed unduly constituted solely as a result of such vacancy.

4. LIQUIDATION RIGHTS.

(a) **Liquidation Events.** Upon any liquidation, dissolution or winding up of the Corporation and its subsidiaries, whether voluntary or involuntary (a "*Liquidation Event*"):

(i) Series B CPS Preference Amount. Subject to A.4(a)(iii) below, each holder of outstanding shares of Series B Convertible Preferred shall be entitled to be paid in cash, before any amount shall be paid or distributed to the holders of Series A-1 Convertible Preferred, the holders of the Common Stock or any other capital stock ranking on liquidation junior to the Series B Convertible Preferred, an amount per share of Series B Convertible Preferred equal to the Series B Original Issue Price (as defined below) (the "*Series B CPS Participation Amount*"). In addition, following the payment in full of the Series B CPS Participation Amount and the Series A-1 CPS Participation Amount to the holders of shares of Series B Convertible Preferred and Series A-1 Convertible Preferred, respectively, each holder of outstanding shares of Series B Convertible Preferred shall be entitled to be paid in cash the amount of any unpaid Series B CPS Accruing Dividends on such share on a pari passu basis with the payment of any unpaid Series A-1 CPS Accruing Dividends before any amount shall be paid or distributed to the holders of the Common Stock or any other capital stock ranking on liquidation junior to the Series B Convertible Preferred Stock (. If the amounts available for distribution by the Corporation to the holders of Series B Convertible Preferred upon a Liquidation Event or Liquidity Event are not sufficient to pay the aggregate amounts due to such holders hereunder, such holders shall share ratably in any distribution in proportion to the full respective preferential amounts to which they respectively are entitled. The "*Series B Original Issue Price*" shall mean \$2.106032 per share (as adjusted appropriately for stock splits, stock dividends, combinations, recapitalizations and the like).

(ii) Series A-1 CPS Preference Amount. After the prior payment in full of the Series B CPS Participation Amount in respect of all shares of Series B Convertible Preferred, subject to A.4(a)(iii) below, each holder of outstanding shares of Series A-1 Convertible Preferred shall be entitled to be paid in cash, before any amount shall be paid or distributed to the holders of the Common Stock or any other capital stock ranking on liquidation junior to the Series A-1 Convertible Preferred, an amount per share of Series A-1 Convertible Preferred equal to the Series A-1 Original Issue Price (as defined below) (the "*Series A-1 CPS Participation Amount*" and, collectively with the Series B CPS Participation Amount, each a "*CPS Participation Amount*"). In addition, following the payment in full of the Series B CPS Participation Amount and the Series A-1 CPS Participation Amount to the holders of shares of Series B Convertible Preferred and Series A-1 Convertible Preferred, respectively, each holder of outstanding shares of Series A-1 Convertible Preferred shall be entitled to be paid in cash the amount of any unpaid Series A-1 CPS Accruing Dividends on such share on a pari passu basis with the payment of any unpaid Series B CPS Accruing Dividends before any amount shall be paid or distributed to the holders of the Common Stock or any other capital stock ranking on liquidation junior to the Series A-1 Convertible Preferred Stock. If the amounts available for distribution by the Corporation to the holders of Series A-1 Convertible Preferred upon a

Liquidation Event or Liquidity Event are not sufficient to pay the aggregate amounts due to such holders hereunder, such holders shall share ratably in any distribution in proportion to the full respective preferential amounts to which they respectively are entitled. The "*Series A-1 Original Issue Price*" shall mean \$1.949754 per share (as adjusted appropriately for stock splits, stock dividends, combinations, recapitalizations and the like).

(iii) Additional Participation and Adjustments. The holders of outstanding shares of Convertible Preferred Stock shall be entitled to be paid for each share of Convertible Preferred Stock such amount of the remaining assets of the Corporation as would have been payable per share of Convertible Preferred Stock in respect of the number of shares of Common Stock that would have been issued in respect of such share had all shares of Convertible Preferred Stock been converted into shares of Common Stock pursuant to Section A.5(a)(i) and assuming for the sake of such calculation that the CPS Participation Amounts and CPS Accruing Dividends were paid in full and no shares of Redeemable Preferred Stock had been issued in respect thereof immediately prior to such Liquidation Event or Liquidity Event (the "*As-Converted Amount*" for such series of Convertible Preferred Stock; and the sum of the applicable CPS Participation Amount, CPS Accruing Dividends and the As-Converted Amount for a series of Convertible Preferred Stock, the "*CPS Preference Amount*" for such series); provided, however, that the adjustments set forth in subparagraphs (A) and (B) below shall be taken into account to the extent applicable in determining the applicable CPS Participation Amount.

(A) In the event that the As-Converted Amount for a share of a series of Convertible Preferred Stock determined pursuant to the formula in Section A.4(a)(iii) above would be greater than (1) \$4.212064 per share minus the amount of any unpaid applicable CPS Accruing Dividends on such share with respect to a share of Series B Convertible Preferred or (2) \$3.899508 per share minus the amount of any unpaid applicable CPS Accruing Dividends on such share with respect to a share of Series A-1 Convertible Preferred (each as adjusted appropriately for stock splits, stock dividends, recapitalizations and the like, the "*CPS Lower Cap*") but less than the applicable CPS Upper Cap (as defined below) for such series, the applicable CPS Participation Amount for such share shall instead be equal to the amount obtained by multiplying (X) the applicable CPS Participation Amount (before giving effect to any such reduction) by (Y) a fraction, the numerator of which is the difference between the applicable CPS Upper Cap and the applicable As-Converted Amount and the denominator of which is the difference between the applicable CPS Upper Cap and the applicable CPS Lower Cap. The following definitions shall apply:

(1) The "*CPS Upper Cap*" for a share of a series of Convertible Preferred Stock shall be an amount obtained by subtracting (X) the difference between the applicable Pro-Forma As-Converted Amount for such share and the applicable As-Converted Amount for such share from (Y) \$7.371113 minus the amount of any unpaid Series B CPS Accruing Dividends with respect to a share of Series B Convertible Preferred and \$6.824139 minus the amount of any unpaid Series A-1 CPS Accruing Dividends with respect to a share of Series A-1 Convertible Preferred (each as adjusted appropriately for stock splits, stock dividends, recapitalizations and the like).

(2) The "Pro-Forma As-Converted Amount" for a share of a series of Convertible Preferred Stock shall be an amount equal to what such share would receive with respect to the shares of Common Stock that would have been issued in respect of such share had all shares of such series of Convertible Preferred Stock been converted into shares of Common Stock pursuant to Section A.5(a)(i) and assuming for the sake of such calculation that (i) all CPS Accruing Dividends have been paid and (ii) no shares of Redeemable Preferred Stock had been issued in respect thereof immediately prior to such Liquidation Event (and, for the sake of clarity, without any payment of the applicable RPS Preference Amount (as defined below)).

(B) In the event that the Pro Forma As-Converted Amount payable in respect of each share of a series of Convertible Preferred Stock equals or exceeds \$7.371113 minus the amount of any unpaid Series B CPS Accruing Dividends with respect to a share of Series B Convertible Preferred or \$6.824139 minus the amount of any unpaid Series A-1 CPS Accruing Dividends with respect to a share of Series A-1 Convertible Preferred (each as adjusted appropriately for stock splits, stock dividends, recapitalizations and the like) then the applicable CPS Participation Amount shall be reduced to zero and each such share shall only be entitled to receive the applicable As-Converted Amount and applicable CPS Accruing Dividends in respect thereof. For the sake of clarity, upon reduction of the Series B CPS Participation Amount or Series A-1 CPS Participation Amount to zero, it is intended that the applicable As-Converted Amount would be equal to the applicable Pro-Forma As-Converted Amount.

(iv) Remaining Assets. After the prior payment in full of the Series B CPS Preference Amount and the Series A-1 CPS Preference Amount in respect of all shares of Convertible Preferred Stock in connection with a Liquidation Event, the remaining assets and funds of the Corporation available for distribution to its stockholders, if any, shall be distributed among the holders of shares of Common Stock then outstanding.

(b) Mergers, Asset Sales and Other Changes of Control. Any Liquidity Event (as defined below) shall be deemed to be a Liquidation Event purposes of Section A.4(a) hereunder unless (i) the holders of not less than a majority of the outstanding shares of Series B Convertible Preferred Stock (the "*Series B Majority Interest*") elect otherwise by written notice to the Corporation and the other holders of Series B Convertible Preferred at least five (5) days prior to the closing of the relevant transaction (a "*Series B Non-Participation Election*") and (ii) the holders of not less than a majority of the outstanding shares of Series A-1 Convertible Preferred Stock (the "*Series A-1 Majority Interest*") elect otherwise by written notice to the Corporation and the other holders of Series A-1 Convertible Preferred at least five (5) days prior to the closing of the relevant transaction (a "*Series A-1 Non-Participation Election*", and together with a Series B Non-Participation Election, a "*Non-Participation Election*"). In order to give effect to the provisions hereof, the Corporation shall provide ten (10) days prior written notice to the holders of the Series A-1 Convertible Preferred and Series B Convertible Preferred of the closing of any such transaction, unless waived in writing by the Series A-1 Majority Interest and the Series B Majority Interest. The transactions in which the holders of the Convertible Preferred Stock shall be entitled to receive such preference include (i) any merger or consolidation of the Corporation with or into another corporation or entity in which less than a majority of the outstanding voting power of the surviving or consolidated corporation or entity

(or, if the surviving or resulting corporation or entity is a wholly owned subsidiary of another corporation or entity immediately following such merger or consolidation, the outstanding voting power of the parent corporation or entity of such surviving or resulting corporation or entity) immediately following such event is held by persons or entities who were stockholders of the Corporation immediately prior to such event (an "*Acquisition*"), (ii) any sale, license or transfer of all or substantially all of the properties and assets of the Corporation and its subsidiaries, taken as a whole, except where such sale, license or transfer is to a wholly owned direct or indirect subsidiary of the Corporation (an "*Asset Transfer*"), (iii) any redemption or repurchase of shares representing a majority of the outstanding voting power of the Corporation, and (iv) the Corporation's initial public offering of Common Stock (or any common stock successor to such Common Stock) pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "*Securities Act*") in a transaction that does not constitute a QPO (each, a "*Liquidity Event*"). A "*QPO*" shall be defined as a public offering of the Corporation's capital stock pursuant to an effective registration statement under the Securities Act if (i) such registration statement covers the offer and sale of Common Stock, the aggregate net proceeds (after underwriting discounts, commissions and fees) attributable to sales for the account of the Corporation exceed \$75,000,000 and the price per share is at least three (3x) times the Series B Original Issue Price, (ii) such Common Stock is listed for trading on either the New York Stock Exchange (or its successor) or the NASDAQ National Market (or its successor) and (iii) either, at the election of the Series B Majority Interest, (A) all shares of Redeemable Preferred Stock that are outstanding or issuable upon the conversion of shares of Convertible Preferred Stock pursuant to Section A.5(a) are redeemed for cash immediately upon and as of the closing of such offering or (B) contemporaneously with such offering, cash in an amount sufficient to redeem all shares of Redeemable Preferred Stock that are outstanding or issuable upon the conversion of shares of Convertible Preferred Stock pursuant to Section A.5(a) is segregated and irrevocably held by the Corporation for payment to holders of Redeemable Preferred Stock.

Unless a Non-Participation Election is made, all consideration payable to the stockholders of the Corporation (in connection with a merger, consolidation or stock sale, for example) will be paid by the purchaser to the holders of the capital stock of the Corporation in accordance with the liquidation rights set forth in Sections A.4, B.4 and D.4. If the Corporation receives consideration in connection with any such Liquidity Event and the Corporation has not by such time otherwise committed to dissolve or liquidate within 60 days after such Liquidity Event, then the Corporation will deliver a written notice to each holder of Convertible Preferred Stock no later than the 30th day after the Liquidity Event advising them of their right to require the redemption of their shares of Convertible Preferred Stock. In such event, the holders of a Series B Majority Interest by written notice to the Corporation may require the Corporation to use all assets of the Corporation (net of any retained liabilities associated with the assets sold) (the "*Net Proceeds*") to redeem, not later than on the 90th day after such Liquidity Event, all outstanding shares of Convertible Preferred Stock at a price per share equal to the Series B CPS Preference Amount or the Series A-1 CPS Preference Amount, as the case may be. Prior to the distribution or redemption provided for in this paragraph, the Corporation shall not expend, dissipate or otherwise dispose of the consideration received in such Liquidity Event, except to discharge reasonable expenses incurred in the ordinary course of business.

The preferences and priorities set forth in Section A.4(a) and relating to the Series B CPS Preference Amount and the Series A-1 CPS Preference Amount are specifically intended to be

applicable in any Liquidity Event. In furtherance of the foregoing, the Corporation shall take such actions as are necessary to give effect to the provisions of this Section A.4(b), including, without limitation, in the case of a merger or consolidation, by causing the definitive agreement relating to such merger or consolidation to provide for a rate at which the shares of Convertible Preferred Stock are converted into or exchanged for consideration that gives effect to such preferences and priorities. The Corporation shall promptly provide to the holders of shares of Convertible Preferred Stock such information concerning the terms of any Liquidity Event, and the value of the assets of the Corporation, as may reasonably be requested by the holders of Convertible Preferred Stock. The Corporation shall not have the power to effect any transaction constituting a Liquidity Event unless the relevant transaction agreement reflects the preferential rights of the Convertible Preferred Stock described herein.

In the event of a Non-Participation Election, all applicable holders of such class of Convertible Preferred Stock shall be deemed to have made such Non-Participation Election and such Non-Participation Election shall bind all applicable holders of the Convertible Preferred Stock.

(c) Allocation of Escrow or Contingent Payments. In the event of a Liquidation Event or Liquidity Event, if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow or is payable to the stockholders of the Corporation subject to contingencies, the definitive acquisition agreement relating thereto shall provide that (i) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Section A.4(a) above as if the Initial Consideration were the only consideration payable in connection with such Liquidation Event or Liquidity Event and (ii) any additional consideration which becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Section A.4(a) above after taking into account the previous payment of the Initial Consideration as part of the same transaction.

5. CONVERSION RIGHTS.

The holders of shares of Convertible Preferred Stock shall have the following conversion rights:

(a) Conversion. In connection with, and subject to the consummation of, any initial public offering of the Corporation's capital stock pursuant to an effective registration statement under the Securities Act, each outstanding share of Convertible Preferred Stock shall automatically be converted, without payment of any additional consideration, into (i) such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (A) the Series B Original Issue Price or Series A-1 Original Issue Price, as applicable for each such share, plus any declared but unpaid CPS Common Dividends on each such share by (B) the applicable Convertible Conversion Price (as defined below) at the time in effect for such share of Convertible Preferred Stock (subject to adjustment as provided herein) and (ii) one fully paid and nonassessable share of Series B Redeemable Preferred or share of Series A-1 Redeemable Preferred, respectively (e.g., (A) one (1) share of Series B Convertible Preferred converts into

one (1) share of Common Stock (assuming the Conversion Price of the Series B Convertible Preferred in effect at the time of such conversion equals the Series B Original Issue Price) and one (1) share of Series B Redeemable Preferred and (B) one (1) share of Series A-1 Convertible Preferred converts into one (1) share of Common Stock (assuming the Conversion Price of the Series A-1 Convertible Preferred in effect at the time of such conversion equals the Series A-1 Original Issue Price) and one (1) share of Series A-1 Redeemable Preferred). The applicable rate at which Convertible Preferred Stock is convertible into Common Stock from time to time is referred to herein as the "*Common Conversion Rate*" and the applicable rate at which Redeemable Preferred Stock is convertible into Redeemable Preferred Stock from time to time is referred to herein as the "*Redeemable Conversion Rate*". The initial "*Convertible Conversion Price*" per share for shares of Series B Convertible Preferred shall be the Series B Original Issue Price and for shares of Series A-1 Convertible Preferred shall be the Series A-1 Original Issue Price, and such Convertible Conversion Price shall be subject to adjustment from time to time as set forth in Section A.6.

(b) Procedure for Conversion. As of the closing of such initial public offering (the "*Conversion Date*"), all outstanding shares of Convertible Preferred Stock shall be converted into shares of Common Stock and applicable shares of Redeemable Preferred Stock without any further action by the holders of such outstanding shares and whether or not the certificates representing such shares of Convertible Preferred Stock are surrendered to the Corporation. On the Conversion Date, all rights with respect to the Convertible Preferred Stock so converted shall terminate, except any of the rights of the holders thereof upon surrender of their certificate or certificates therefor or delivery of an affidavit of loss thereof to receive certificates for the number of shares of Common Stock and Redeemable Preferred Stock into which such shares of Convertible Preferred Stock have been converted. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by an attorney-in-fact duly authorized in writing. Upon surrender of such certificates or affidavit of loss, the Corporation shall issue and deliver to such holder, promptly (and in any event in such time as is sufficient to enable such holder to participate in such initial public offering) 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 and applicable shares of Redeemable Preferred Stock into which the shares of the Convertible Preferred Stock surrendered are convertible on the Conversion Date.

(c) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock and Redeemable Preferred Stock, solely for the purpose of effecting the conversion of the shares of Convertible Preferred Stock, such number of its shares of Common Stock and Redeemable Preferred Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Convertible Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock or Redeemable Preferred Stock is not sufficient to effect the conversion of all outstanding shares of Convertible Preferred Stock, the Corporation shall take such action as may be necessary to increase the number of its authorized but unissued shares of Common Stock or Redeemable Preferred Stock, as the case may be, to such number of shares as are sufficient for such purpose and to reserve the appropriate number of shares of Common Stock or Redeemable Preferred Stock, as the case may be, for issuance upon such conversion.

(d) No Closing of Transfer Books. The Corporation shall not close its books against the transfer of shares of Convertible Preferred Stock in any manner that would interfere with the timely conversion of any shares of Convertible Preferred Stock.

(e) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Convertible Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Convertible 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 Corporation 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 of Directors) on the date of conversion.

6. Adjustments.

(a) Adjustments to the Convertible Conversion Price. Except as provided in Section A.6(b) and except in the case of an event described in Section A.6(c), if and whenever after the date this Amended and Restated Certificate of Incorporation is first filed with the Secretary of State of Delaware (the "Filing Date") the Corporation issues or sells, or is, in accordance with this Section A.6(a), deemed to have issued or sold, any shares of Common Stock for a consideration per share less than the applicable Convertible Conversion Price in effect immediately prior to such issuance or sale, then, upon such issuance or sale (or deemed issuance or sale), the applicable Convertible Conversion Price shall be reduced to the price determined by dividing (x) the sum of (A) the Common Stock Deemed Outstanding (as defined below) immediately prior to such issuance or sale (or deemed issuance or sale) multiplied by the applicable Convertible Conversion Price then in effect and (B) the consideration, if any, received by the Corporation upon such issuance or sale (or deemed issuance or sale) by (y) the Common Stock Deemed Outstanding immediately after such issuance or sale (or deemed issuance or sale).

For purposes of this Section A.6(a), the following shall also be applicable:

(i) Issuance of Rights or Options. If the Corporation, at any time after the Filing Date, in any manner grants (whether directly or by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "Options" and such convertible or exchangeable stock or securities being called "Convertible Securities"), in each case for consideration per share (determined as provided in this paragraph and in Section A.6(a)(vi)) less than the applicable Convertible Conversion Price then in effect, whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options, or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon exercise of such Options, shall be deemed to have been issued as of the date of granting of such Options, at a price per share equal to the amount determined by dividing (A) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration

payable to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issuance or sale of such Convertible Securities and upon the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock deemed to have been so issued. Except as otherwise provided in Section A.6(a)(iii), no adjustment of the applicable Convertible Conversion Price shall be made upon the actual issuance of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. If the Corporation, at any time after the Filing Date, in any manner issues or sells any Convertible Securities for consideration per share (determined as provided in this paragraph and in Section A.6(a)(vi)) less than the applicable Convertible Conversion Price then in effect, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued as of the date of the issuance or sale of such Convertible Securities, at a price per share equal to the amount determined by dividing (A) the total amount, if any, received or receivable by the Corporation as consideration for the issuance or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock deemed to have been so issued; provided, that (1) except as otherwise provided in Section A.6(a)(iii), no adjustment of the Convertible Conversion Price shall be made upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities and (2) if any such issuance or sale of such Convertible Securities is made upon exercise of any Options to purchase any such Convertible Securities, no further adjustment of the applicable Convertible Conversion Price shall be made by reason of such issuance or sale.

(iii) Change in Option Price or applicable Conversion Rate; Termination of Options or Convertible Securities. If a change occurs in (A) the maximum number of shares of Common Stock issuable in connection with any Option referred to in Section A.6(a)(i) or any Convertible Securities referred to in Section A.6(a)(i) or (ii), (B) the purchase price provided for in any Option referred to in Section A.6(a)(i), (C) the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in Section A.6(a)(i) or (ii) or (D) the rate at which Convertible Securities referred to in Section A.6(a)(i) or (ii) are convertible into or exchangeable for Common Stock (in each case, other than in connection with an event described in Section A.6(b)), then the Convertible Conversion Price in effect at the time of such event shall be adjusted to the applicable Convertible Conversion Price that would have been in effect at such time had such Options or Convertible Securities that remain outstanding provided for such changed maximum number of shares, purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold, but in no event shall any such adjustment cause the Convertible Conversion Price to exceed the Convertible Conversion Price in effect at the time of the original adjustment thereto. Upon the termination of any such Option or any such right to convert or exchange such Convertible Securities, the applicable Convertible Conversion Price then in effect hereunder shall be increased to the applicable Convertible Conversion Price that

would have been in effect at the time of such termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such termination (i.e., to the extent that fewer than the number of shares of Common Stock deemed to have been issued in connection with such Option or Convertible Securities were actually issued), never been issued or been issued at such higher price, as the case may be.

(iv) Stock Dividends. If the Corporation declares a dividend or makes any other distribution upon any stock of the Corporation payable in Common Stock, Options or Convertible Securities, any Common Stock, Options or Convertible Securities, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration, and the applicable Convertible Conversion Price shall be adjusted pursuant to this Section A.6(a); provided, that no adjustment shall be made to the applicable Convertible Conversion Price as a result of such dividend or distribution if the holders of the shares of Convertible Preferred Stock are entitled to, and do, receive such dividend or distribution in accordance with Section A.2; and, provided, further, that if any adjustment is made to the applicable Convertible Conversion Price as a result of the declaration of a dividend and such dividend is not effected, the applicable Convertible Conversion Price shall be appropriately readjusted.

(v) Other Dividends and Distributions. If the Corporation at any time or from time to time after the Filing Date makes or issues, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities or other property of the Corporation other than shares of Common Stock, then and in each such event provision shall be made so that the holders of the outstanding shares of Convertible Preferred Stock shall receive upon conversion thereof into Common Stock, the amount of such other securities of the Corporation or the value of such other property that they would have received had the Convertible Preferred Stock been converted into Common Stock on the date of such event and had such holders thereafter, during the period from the date of such event to and including the conversion date, retained such securities or other property receivable by them during such period giving application to all adjustments called for during such period under Section A.6 with respect to the rights of the holders of the outstanding shares of Convertible Preferred Stock; provided that no such adjustment shall be made if the holders of Convertible Preferred Stock simultaneously receive a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Convertible Preferred Stock had been converted into Common Stock on the date of such event.

(vi) Consideration for Stock. In case any shares of Common Stock are issued or sold, or deemed issued or sold, for cash, the consideration received therefor shall be deemed to be the amount received or to be received by the Corporation therefor (determined with respect to deemed issuances and sales in connection with Options and Convertible Securities in accordance with clause (A) of Section A.6(a)(i) or Section A.6(a)(ii), as appropriate) determined in the manner set forth below in this Section A.6(a)(vi). In case any shares of Common Stock are issued or sold, or deemed issued or sold, for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration received or to be received by the Corporation (determined with respect to deemed issuances and sales in connection with Options and

Convertible Securities in accordance with clause (A) of Section A.6(a)(i) or Section A.6(a)(ii), as appropriate) as determined in good faith by the Board of Directors of the Corporation. If any Options are issued in connection with the issuance and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors of the Corporation.

(vii) Record Date. If the Corporation takes a record of the holders of its Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (B) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issuance or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(viii) Treasury Shares. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation; provided, that the disposition of any such shares shall be considered an issuance or sale of Common Stock for the purpose of this Section A.6.

(ix) Other Issuances or Sales: Indeterminable Amounts. In calculating any adjustment to the applicable Convertible Conversion Price pursuant to this Section A.6(a): (A) any shares of Common Stock, Options or Convertible Securities issued or sold (or deemed issued or sold pursuant to Section A.6(a)(i) or Section A.6(a)(ii) above) after the Filing Date and prior to the effective date of such adjustment, the issuance or sale (or deemed issuance or sale) of which did not result in any adjustment to the applicable Convertible Conversion Price under this Section A.6(a), shall be deemed to have been issued or sold at the applicable Convertible Conversion Price then in effect prior to such adjustment, and (B) any Options or Convertible Securities that provide, as of the effective date of such adjustment, for the issuance upon exercise or conversion thereof of an indeterminable number of shares of Common Stock shall be disregarded for purposes of the calculation and what shares are deemed to be outstanding; provided, that at such time as a number of shares of Common Stock issuable upon exercise or conversion of such Options or Convertible Securities becomes determinable, then the applicable Convertible Conversion Price shall be adjusted as provided in Section A.6(a)(iii) above.

(x) Common Stock Deemed Outstanding. For purposes of this Section A.6, the term "*Common Stock Deemed Outstanding*" shall mean the sum of (A) the number of actually issued and outstanding shares of Common Stock on the day immediately preceding the given date, (B) the number of shares of Common Stock into which the then outstanding shares of Convertible 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.

(xi) Small Adjustments. No adjustment shall be made to the Convertible Conversion Price in an amount less than one cent per share. Any adjustment otherwise required by this Section A.6(a) that is not required to be made due to the preceding sentence shall be included in any subsequent adjustment to the Convertible Conversion Price.

(xii) Waiver of Antidilution Protection. Notwithstanding anything to the contrary, any provision of this Section A.6(a) and any adjustments made or required to be made to the Convertible Conversion Price pursuant hereto may be waived on behalf of all shares of Convertible Preferred Stock by the vote or written consent of the Series B Majority Interest, voting as a separate class.

(b) Certain Issuances Excepted from Antidilution Protection. Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the applicable Convertible Conversion Price in the case of the issuance from and after the Filing Date of any of the following:

(i) shares of Common Stock or Redeemable Preferred Stock upon conversion of shares of Convertible Preferred Stock;

(ii) up to 14,579,833 (such amount to be appropriately adjusted for stock splits, stock dividends, recapitalizations and the like) shares of Common Stock or options therefor to directors, officers, employees or consultants of the Corporation or any subsidiary in connection with their service as directors of the Corporation or any subsidiary, their employment by the Corporation or any subsidiary or their retention as consultants by the Corporation or any subsidiary, in each case authorized by the Board of Directors and issued pursuant to the Corporation's Stock Option and Grant Plan;

(iii) shares of Common Stock issued pursuant to the exercise of Options or Convertible Securities outstanding as of the Filing Date;

(iv) shares of Common Stock, Preferred Stock, Options and Convertible Securities issued for consideration other than cash pursuant to a merger, consolidation, acquisition, strategic alliance or similar business combination approved by the Board of Directors (including the affirmative approval of at least one Series B Director);

(v) shares of Common Stock, Preferred Stock, Options and 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, each as approved by the Board of Directors (including the affirmative approval of at least one Series B Director);

(vi) shares of Common Stock, Preferred Stock, Options and Convertible Securities issued in connection with strategic transactions involving the Corporation and other entities, including (A) joint ventures, manufacturing, marketing or distribution arrangements or (B) technology transfer or development arrangements approved by the Board of Directors (including the affirmative approval of at least one Series B Director);

(vii) shares of Common Stock, Options or Convertible Securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors (including the affirmative approval of at least one Series B Director);

(viii) shares of Common Stock issued in a public offering; or

(ix) Common Stock issued in any other transaction in which exemption from the antidilution provisions of Section A.6(a) is approved by the affirmative vote or consent of a majority of the then-outstanding shares of Preferred Stock that would otherwise receive such adjustment or by a majority of the members of the Board of Directors designated by the holders of Preferred Stock pursuant to a shareholders' or other written agreement with the Corporation.

(c) Subdivision or Combination of Common Stock. If the Corporation shall at any time after the Filing Date subdivide its outstanding shares of Common Stock into a greater number of shares (by any stock split, stock dividend or otherwise), then the Convertible Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and, conversely, if the Corporation shall at any time after the Filing Date combine its outstanding shares of Common Stock into a smaller number of shares (by any reverse stock split or otherwise), then the applicable Convertible Conversion Price in effect immediately prior to such combination shall be proportionately increased.

(d) Reorganization or Reclassification. If at any time after the Filing Date, any capital reorganization or reclassification of the capital stock of the Corporation shall be effected in such a way that holders of shares of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for such shares of Common Stock, then, as a condition of such reorganization or reclassification, lawful and adequate provisions shall be made whereby each holder of a share or shares of Convertible Preferred Stock shall thereupon have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of shares of Common Stock immediately theretofore receivable upon the conversion of such share or shares of Convertible Preferred Stock into Common Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such Common Stock immediately theretofore receivable upon such conversion had such reorganization or reclassification not taken place, and in any such case appropriate provisions shall be made with respect to the rights and interests of such holder such that the provisions hereof (including, without limitation, provisions for adjustments of the applicable Convertible Conversion Price) shall thereafter be applicable in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights.

(e) Adjustment for Liquidity Event Transactions. If a Non-Participation Election under Section A.4(b) has been made in connection with any Liquidity Event (other than an initial public offering), each share of Convertible Preferred Stock shall remain outstanding and shall thereafter be convertible (or shall be converted into a security that shall be convertible) into the kind and amount of shares of securities or other property to which a holder of the number of shares of Common Stock and Redeemable Preferred Stock of the

Corporation deliverable upon conversion of such Convertible Preferred Stock into Common Stock and Redeemable Preferred Stock would have been entitled upon such Liquidity Event; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors and a Series B Majority Interest) shall be made in the application of the provisions in Section A.6 set forth with respect to the rights and interests thereafter of the holders of the Convertible Preferred Stock, such that the provisions set forth in Section A.6 (including provisions with respect to changes in and other adjustments of the applicable Convertible Conversion Price) shall thereafter be applicable in relation to any securities or other property thereafter deliverable upon the conversion of the Convertible Preferred Stock.

(f) Adjustments to the Convertible Conversion Price for Indemnification by the Corporation. In the event the Corporation has an obligation to indemnify a holder of shares of Series B Convertible Preferred or its affiliates pursuant to the Corporation's Series B Convertible Preferred Stock Purchase Agreement dated as of July 24, 2012 (the "Series B Purchase Agreement"), such obligation to indemnify shall be satisfied pursuant to an adjustment to the then applicable Convertible Conversion Price for shares of Series B Convertible Preferred in accordance with the following provision: the applicable Convertible Conversion Price for Series B Convertible Preferred shall be reduced to the price determined by dividing (x) the product of (A) the number of shares of Series B Convertible Preferred issued and outstanding at the time such indemnification obligation is to be satisfied (the "*Indemnitee Holdings*") and (B) the then current applicable Convertible Conversion Price for Series B Convertible Preferred prior to any adjustment herein by (y) the sum of (C) the Indemnitee Holdings and (D) the number of additional shares of Common Stock to which the holders of shares of Series B Convertible Preferred are entitled pursuant to the Series B Purchase Agreement to receive upon conversion of the Series B Convertible Preferred (as determined pursuant to the Series B Purchase Agreement). In addition, (i) no adjustment shall be made to the Convertible Conversion Price applicable to the Series A-1 Convertible Preferred as a result of any adjustment to the Series B Convertible Conversion Price pursuant to this Section A.6(f), and (ii) in no circumstance shall the Convertible Conversion Price applicable to the Series B Convertible Preferred be increased as a result of any adjustment pursuant to this Section A.6(f).

7. **REDEMPTION.** The Corporation shall be obligated to redeem the Convertible Preferred Stock as follows:

(a) Redemption Procedure. The holders of a majority of the then outstanding shares of Convertible Preferred Stock, voting together as a separate class, by delivering written notice to the Corporation anytime on or after July 24, 2018 (the "*Redemption Request*"), may require the Corporation, to the extent it is not prohibited under Delaware law, to redeem all or a portion of the then-outstanding shares of Convertible Preferred Stock on or before the one (1) year anniversary of the Redemption Request (the "*Final Redemption Date*"). Upon such request, all holders of Convertible Preferred Stock shall be deemed to have elected to have all or their pro rata portion of the shares of Convertible Preferred Stock to be redeemed pursuant to this Section A.7, and such election shall bind all holders of Convertible Preferred Stock. The Corporation shall effect the redemptions of the Convertible Preferred Stock on or prior to the Final Redemption Date by paying in cash in exchange for each share of Convertible Preferred Stock to be redeemed on the redemption date a sum equal to the greater of (i) the Series B CPS Preference Amount or the Series A-1 CPS Preference Amount, as the case may be

for each applicable share of Convertible Preferred Stock plus any declared but unpaid CPS Common Dividends on such share of Convertible Preferred Stock, and (ii) the fair market value of the shares of Convertible Preferred Stock being redeemed on such redemption date (as mutually determined by the Board and the Series B Majority Interest and if such parties cannot agree within thirty (30) days of such redemption date, by an Independent Appraiser pursuant to the mechanism set forth in Section A.7(e)). The total amount to be paid for each share of Convertible Preferred Stock redeemed pursuant to this Section 7(a) is hereinafter referred to as the "*Redemption Price*." Shares of Convertible Preferred Stock subject to redemption pursuant to this Section 7(a) shall be redeemed (i) first from each holder of Series B Convertible Preferred on a pro rata basis up to an amount per share equal to the Series B Original Issue Price based on the number of shares of Series B Convertible Preferred then held, (ii) second from each holder of Series A-1 Convertible Preferred on a pro rata basis up to an amount per share equal to the Series A-1 Original Issue Price based on the number of shares of Series A-1 Convertible Preferred then held, and (iii) third from the holders of Series B Convertible Preferred and the holders of Series A-1 Convertible Preferred on a pari passu basis.

(b) **Insufficient Funds.** Except to the extent prohibited by Delaware law governing distributions to stockholders, if the funds of the Corporation available to redeem shares of Convertible Preferred Stock on any redemption date are insufficient to redeem the total number of such shares required to be redeemed on such date, the Corporation shall (i) apply all of its assets to any such redemption, and to no other corporate purpose, except to the extent prohibited by Delaware law governing distributions to stockholders and (ii) in any event, except to the extent prohibited by Delaware law governing distributions to stockholder, use any funds available to redeem the maximum possible number of such shares from the holders of such shares to be redeemed in proportion to the respective number of such shares that otherwise would have been redeemed if all such shares had been redeemed in full. At any time thereafter when additional funds of the Corporation become legally available to redeem such shares of Convertible Preferred Stock, the Corporation shall immediately use such funds to redeem the balance of the shares that the Corporation became obligated to redeem on or prior to the Final Redemption Date (but that it has not yet redeemed) at the applicable redemption price.

(c) **Sale Process.** In addition to any other remedies available at law or in equity, if the shares of Convertible Preferred Stock subject to the Redemption Request shall remain outstanding after the Final Redemption Date, the Series B Majority Interest shall be entitled to initiate a Sale Process as set forth in and defined in the Corporation's Amended and Restated Voting Agreement dated on or about the Filing Date, as it may be amended from time to time.

(d) **Surrender.** Each holder of shares of Convertible Preferred Stock to be redeemed shall surrender the certificate or certificates representing such shares to the Corporation, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto). In the event the certificate or certificates are lost, stolen or missing, such holder may deliver an affidavit of loss. Any such delivery shall be made at the principal executive office of the Corporation or such other place as the Corporation may from time to time designate by notice to the holders of Convertible Preferred Stock. Each surrendered certificate shall be canceled and retired, and the Corporation shall thereafter make payment of the applicable redemption price by certified check or wire transfer; provided, however, that if the

Corporation has insufficient funds legally available to redeem all shares of Convertible Preferred Stock required to be redeemed, each such holder shall, in addition to receiving the payment of the portion of the aggregate redemption price that the Corporation is not legally prohibited from paying to such holder by certified check or wire transfer, receive a new stock certificate for those shares of Convertible Preferred Stock not so redeemed.

(c) **Fair Market Value.** For purposes of this Section 7(c), unless agreed otherwise in writing between the Series B Majority Interest and the Board, the appraised fair market value of the shares of Convertible Preferred Stock being redeemed shall be determined based on the amount that would be payable to such holder of such shares of Convertible Preferred Stock with respect to its shares if (i) the Corporation was sold as a full enterprise for its fair market value as a going concern on the date of determination, (ii) there are no premiums or discounts for majority or minority ownership position or any discounts for lack of marketability, lack of control, market blockage, security law or other restrictions on sale, and (iii) the net proceeds therefrom are distributed to the stockholders pursuant to Section A.4 as though such proceeds were from a Liquidity Event (for the sake of clarity, including payment of the Series B CPS Preference Amount and Series B RPS Preference Amount and the Series A-1 CPS Preference Amount and Series A-1 RPS Preference Amount). Such determination shall be made by an independent appraiser jointly selected by the Corporation and the Series B Majority Interest. The costs of any appraisals required hereunder shall be borne by the Corporation.

8. COVENANTS.

(a) **Separate Vote of Series B Convertible Preferred.** For so long as at least 3,000,000 shares of Series B Convertible Preferred or at least 3,000,000 shares of Series B Redeemable Preferred remain outstanding, the Corporation shall not permit (in any case, by merger, consolidation, operation of law or otherwise), and shall cause its subsidiaries to not permit, without first having obtained the affirmative vote or written consent of the Series B Majority Interest or, if applicable, the holders of not less than a majority of any outstanding shares of Series B Redeemable Preferred:

(i) Any amendment, alteration, waiver or repeal of any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation (including any filing of a Certificate of Designation);

(ii) Any increase or decrease in the authorized number of shares of Convertible Preferred Stock, Redeemable Preferred Stock or Common Stock;

(iii) Any authorization, issuance 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 Corporation having rights, preferences and privileges on a parity with or senior to the Convertible Preferred Stock or Redeemable Preferred Stock with respect to dividends, liquidation preference, sale or merger preferences, redemption, voting or antidilution protection;

(iv) Any redemption or repurchase of the Corporation's Common Stock, Convertible Preferred Stock or Redeemable Preferred Stock (except for (i)

repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof and (ii) redemptions pursuant to Section A.7);

(v) Any agreement by the Corporation regarding an Asset Transfer or Acquisition (each as defined in Section A.4(b));

(vi) Any Liquidation Event or Liquidity Event;

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

(viii) Any action that results in the payment or declaration of a dividend on any shares of Common Stock, Convertible Preferred Stock or Redeemable Preferred Stock;

(ix) Increase the number of shares of Common Stock reserved for issuance pursuant to the 2010 Equity Incentive Plan or establish or amend any other employee stock option plan, employee stock purchase plan, employee restricted stock plan or other similar stock plan;

(x) Any authorization, issuance or any designation by any subsidiary of the Corporation, whether by reclassification or otherwise, of any new or existing class or series of stock or any other securities convertible into equity securities of such subsidiary; or

(xi) Enter into any agreement to do any of the foregoing that is not expressly made conditional on obtaining the affirmative vote or written consent of the Series B Majority Interest.

(b) Separate Vote of Series A-1 Convertible Preferred. For so long as at least 1,500,000 shares of Series A-1 Convertible Preferred or for so long as at least 1,500,000 shares of Series A-1 Redeemable Preferred remain outstanding, the Corporation shall not permit (in any case, by merger, consolidation, operation of law or otherwise), and shall cause its subsidiaries to not permit, without first having obtained the affirmative vote or written consent of the holders of a Series A-1 Majority Interest or, if applicable, the holders of not less than a majority of any outstanding shares of Series A-1 Redeemable Preferred:

(i) Any amendment, alteration, waiver or repeal of any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation (including any filing of a Certificate of Designation) in a manner that adversely affects the powers, preferences or rights of the Series A-1 Convertible Preferred or Series A-1 Redeemable Preferred; or

(ii) Any increase or decrease in the authorized number of shares of Series A-1 Convertible Preferred or Series A-1 Redeemable Preferred.

9. NOTICE; ADJUSTMENT; WAIVERS.

(a) **Liquidation Events, Etc.** In the event (i) the Corporation establishes a record date to determine the holders of any class of securities who are entitled to receive any dividend or other distribution or who are entitled to vote at a meeting (or by written consent) in connection with any of the transactions identified in clause (ii) hereof or (ii) any Liquidation Event, Liquidity Event, QPO or any other public offering becomes reasonably likely to occur, the Corporation shall mail, or cause to be mailed, by first class mail (postage prepaid) to each holder of Convertible Preferred Stock at least ten (10) days prior to such record date specified therein or the expected effective date of any such transaction, whichever is earlier, a notice specifying (A) the date of such record date for the purpose of such dividend or distribution or meeting or consent and a description of such dividend or distribution or the action to be taken at such meeting or by such consent, (B) the date on which any such Liquidation Event, Liquidity Event, QPO or other public offering is expected to become effective and (C) the date on which the books of the Corporation shall close or a record shall be taken with respect to any such event.

(b) **Adjustments; Calculations.** Upon the occurrence of each adjustment or readjustment of the Convertible Conversion Price pursuant to Section A.6, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Convertible Preferred Stock a certificate setting forth in detail (i) such adjustment or readjustment, (ii) the Convertible Conversion Price before and after such adjustment or readjustment and (iii) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of such holder's shares of Convertible Preferred Stock. All such calculations shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share as the case may be.

(c) **Waiver of Notice.** The holders of a Series B Majority Interest may, at any time upon written notice to the Corporation, waive any notice or certificate delivery provisions specified herein for the benefit of such holders, and any such waiver shall be binding upon all holders of the Convertible Preferred Stock.

(d) **Other Waivers.** The holders of a Series B Majority Interest may, at any time upon written notice to the Corporation, waive compliance by the Corporation with any term or provision in this Section A or in Section B, provided that any such waiver does not affect any holder of outstanding shares of Convertible Preferred Stock or Redeemable Preferred Stock in a manner materially different than any other holder, and any such waiver shall be binding upon all holders of Convertible Preferred Stock or Redeemable Preferred Stock.

10. NO REISSUANCE OF CONVERTIBLE PREFERRED STOCK.

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

11. CONTRACTUAL RIGHTS OF HOLDERS.

The various provisions set forth herein for the benefit of the holders of the Convertible Preferred Stock and Redeemable Preferred Stock shall be deemed contract rights enforceable by them, including, without limitation, by action for specific performance.

B. REDEEMABLE PREFERRED STOCK

1. **DESIGNATION AND RANKING.** Of the Corporation's Preferred Stock, a total of 28,489,593 shares shall be designated as a series known as Series B Redeemable Preferred and a total of 3,225,586 shares shall be designated as a series known as Series A-1 Redeemable Preferred.

2. **DIVIDEND RIGHTS.** From and after the date of the issuance of any shares of Redeemable Preferred Stock, dividends will be paid when and if declared by the Board of Directors at the rate per annum of \$0.168483 per share and, if not so declared, such amount shall accumulate on such shares of Series B Redeemable Preferred (the "*Series B RPS Accruing Dividends*") and dividends will be paid when and if declared by the Board of Directors at the rate per annum of \$0.155980 per share and, if not so declared, such amount shall accumulate on such shares of Series A-1 Redeemable Preferred (the "*Series A-1 RPS Accruing Dividends*") and together with the Series B RPS Accruing Dividends, the "*RPS Accruing Dividends*"). The amount of the RPS Accruing Dividends shall be subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization, including, without limitation, with respect to the applicable series of Convertible Preferred Stock. Any RPS Accruing Dividends declared by the Board of Directors shall be paid to the holders of Redeemable Preferred Stock on a pari passu basis.

3. VOTING RIGHTS.

(a) **No Voting Generally.** Except as set forth below with respect to the election of Directors by the holders of Redeemable Preferred Stock or pursuant to Section A.8 of this Article IV, the holders of Redeemable Preferred Stock shall not be entitled to vote on any matters except to the extent otherwise required by law.

(b) Election of Board of Directors; Voting.

(i) The holders of outstanding shares of Series A-1 Redeemable Preferred, voting together as a separate class, shall be entitled to elect one (1) member (the "*Series A-1 RPS Director*") of the Board of Directors and the holders of outstanding shares of Series B Redeemable Preferred, voting together as a separate class, shall be entitled to elect one (1) member (the "*Series B RPS Director*") and together with the Series A-1 RPS Director, the "*RPS Directors*") of the Board of Directors. Except as provided in clause (iv) below, such RPS Directors shall be elected by a plurality vote, with the elected candidates being the candidates receiving the greatest number of affirmative votes of outstanding shares of the applicable series of Redeemable Preferred Stock. In any election of RPS Directors, each holder of the applicable series of Redeemable Preferred Stock will be entitled to cast one vote for or against each candidate with respect to each share of such series of Redeemable Preferred Stock held by such holder, with votes cast against such applicable candidates and votes withheld having no legal effect. The holders of outstanding shares of Series A-1 Redeemable Preferred and Series B Redeemable Preferred shall, voting as separate series, be entitled to remove the Series A-1 RPS Director or any Series B RPS Director, respectively, with or without cause. The election and removal of such RPS Directors shall occur (i) at the annual meeting of holders of

capital stock of the Corporation, (ii) at any special meeting of holders of capital stock of the Corporation if such meeting is called for the purpose of electing or removing members of the Board of Directors, (iii) at any special meeting of holders of the applicable series Redeemable Preferred Stock called by holders of not less than a majority of the outstanding shares of such series of Redeemable Preferred Stock (voting together as a separate class) or (iv) by the written consent of holders of not less than a majority of the outstanding shares of the applicable series of Redeemable Preferred Stock (voting together as a separate class).

(ii) If at any time when any share of Series A-1 Redeemable Preferred or Series B Redeemable Preferred is outstanding any such Series A-1 RPS Director or Series B RPS Director, respectively and as the case may be, should cease to be a member of the Board of Directors for any reason, the vacancy shall be filled by the vote or written consent of only the holders of the applicable series of outstanding shares of Redeemable Preferred Stock in the manner and on the basis specified above or as otherwise provided by law. The holders of outstanding shares of Redeemable Preferred Stock may, in their sole discretion, determine not to elect one or more RPS Directors as provided herein from time to time, and during any such period the Board of Directors shall not be deemed unduly constituted solely as a result of such vacancy.

4. LIQUIDATION RIGHTS. Upon any Liquidation Event:

(a) **Series B RPS Preference Amount.** Subject to B.4(c) below, each holder of outstanding shares of Series B Redeemable Preferred shall be entitled to be paid in cash, before any amount shall be paid or distributed to the holders of Series A-1 Redeemable Preferred, the holders of the Common Stock or any other capital stock ranking on liquidation junior to the Series B Redeemable Preferred, an amount per share of Series B Redeemable Preferred equal to \$2.106032 (as adjusted appropriately for stock splits, stock dividends, combinations, recapitalizations and the like, including, without limitation, any such event that occurs with respect to the Series B Convertible Preferred prior to conversion, the "*Series B RPS Preference Amount*"). In addition, following the payment in full of the Series B RPS Preference Amount and the Series A-1 RPS Preference Amount (as defined below) to the holders of shares of Series B Redeemable Preferred and Series A-1 Redeemable Preferred, respectively, each holder of outstanding shares of Series B Redeemable Preferred shall be entitled to be paid in cash the Series B RPS Aggregate Dividend Amount, on a pari passu basis with the payment of the Series A-1 RPS Aggregate Dividend Amount before any amount shall be paid or distributed to the holders of the Common Stock or any other capital stock ranking on liquidation junior to the Series B Redeemable Preferred. In addition, the Series B RPS Preference Amount shall be subject to adjustment as set forth in B.4(c) below based on the amount per share that the Common Stock is offered to the public at (net of underwriting discounts and commissions) in connection with the Corporation's initial public offering after making appropriate adjustment for stock splits, stock dividends, combinations, recapitalizations and the like (the "*Per Share Offering Price*"). If the amounts available for distribution by the Corporation to holders of Series B Redeemable Preferred upon a Liquidation Event or Liquidity Event are not sufficient to pay the aggregate amounts due to such holders hereunder, such holders shall share ratably in any distribution in proportion to the full respective preferential amounts to which they respectively are entitled.

(b) **Series A-1 RPS Preference Amount.** After the prior payment in full of the Series B RPS Preference Amount in respect of all shares of Series B Redeemable Preferred, subject to B.4(c) below, each holder of outstanding shares of Series A-1 Redeemable Preferred shall be entitled to be paid in cash, before any amount shall be paid or distributed to the holders of the Common Stock or any other capital stock ranking on liquidation junior to the Series A-1 Redeemable Preferred, an amount per share of Series A-1 Redeemable Preferred equal to \$1.949754 (such amount, as adjusted appropriately for stock splits, stock dividends, combinations, recapitalizations and the like, including, without limitation, any such event that occurs with respect to Series A-1 Convertible Preferred prior to conversion, the "*Series A-1 RPS Preference Amount*" and, collectively with the Series B RPS Preference Amount, the "*RPS Preference Amount*"). In addition, and following the payment in full of the Series B RPS Preference Amount and the Series A-1 RPS Preference Amount to the holders of shares of Series B Redeemable Preferred and Series A-1 Redeemable Preferred, respectively, each holder of outstanding shares of Series A-1 Redeemable Preferred shall be entitled to be paid in cash the Series A-1 RPS Aggregate Dividend Amount, on a pari passu basis with the payment of the Series B RPS Aggregate Dividend Amount, before any amount shall be paid or distributed to the holders of the Common Stock or any other capital stock ranking on liquidation junior to the Series A-1 Redeemable Preferred. In addition, the Series A-1 RPS Preference Amount shall be subject to adjustment as set forth in B.4(c) below based on the Per Share Offering Price. If the amounts available for distribution by the Corporation to holders of Series A-1 Redeemable Preferred upon a Liquidation Event or Liquidity Event are not sufficient to pay the aggregate amounts due to such holders hereunder, such holders shall share ratably in any distribution in proportion to the full respective preferential amounts to which they respectively are entitled.

(c) **Additional Participation and Adjustments.**

(i) In the event that the Per Share Offering Price is greater than \$4.212064 minus the amount of the Series B RPS Aggregate Dividend Amount with respect to a share of Series B Redeemable Preferred or \$3.899508 minus the amount of the Series A-1 RPS Aggregate Dividend Amount with respect to a share of Series A-1 Redeemable Preferred (each as adjusted appropriately for stock splits, stock dividends, recapitalizations and the like, including, without limitation, any such event that occurs with respect to Convertible Preferred Stock prior to conversion, the "*RPS Lower Cap*") but less than the applicable RPS Upper Cap (as defined below), the applicable RPS Preference Amount for such share shall instead be equal to the amount obtained by multiplying (X) the applicable RPS Preference Amount (before giving effect to any such reduction) by (Y) a fraction, the numerator of which is the difference between the applicable RPS Upper Cap and the Per Share Offering Price and the denominator of which is the difference between the applicable RPS Upper Cap and the applicable RPS Lower Cap. The following definitions shall apply:

(A) The "*RPS Upper Cap*" for a share of Redeemable Preferred Stock shall be \$7.371113 minus the Series B RPS Aggregate Dividend Amount with respect to a share of Series B Redeemable Preferred and \$6.824139 minus the Series A-1 RPS Aggregate Dividend Amount with respect to a share of Series A-1 Redeemable Preferred (each as adjusted appropriately for stock splits, stock dividends, recapitalizations and the like, including, without limitation, any such event that occurs with respect to Convertible Preferred Stock prior to conversion).

(B) The "*Series B RPS Aggregate Dividend Amount*" shall mean, with respect to a share of Series B Redeemable Preferred, the sum of the amount of any Series B CPS Accruing Dividends accrued but unpaid immediately prior to the conversion of such share pursuant to Section A.5 plus the amount of any unpaid Series B RPS Accruing Dividends on such share.

(C) The "*Series A-1 RPS Aggregate Dividend Amount*" shall mean, with respect to a share of Series A-1 Redeemable Preferred, the sum of the amount of any Series A-1 CPS Accruing Dividends accrued but unpaid immediately prior to the conversion of such share pursuant to Section A.5 plus the amount of any unpaid Series A-1 RPS Accruing Dividends on such share.

(ii) In the event that the Per Share Offering Price equals or exceeds \$7.371113 minus the Series B RPS Aggregate Dividend Amount with respect to a share of Series B RPS Redeemable Preferred or \$6.824139 minus the Series A-1 RPS Aggregate Dividend Amount with respect to a share of Series A-1 RPS Redeemable Preferred (each as adjusted appropriately for stock splits, stock dividends, recapitalizations and the like, including, without limitation, any such event that occurs with respect to Convertible Preferred Stock prior to conversion) then the applicable RPS Preference Amount shall be reduced to zero and each share of applicable Redeemable Preferred shall continue to accrue and receive the Series B RPS Aggregate Dividend Amount or the Series A-1 RPS Aggregate Dividend Amount, as the case may be, up to and until a Liquidity Event, Liquidation Event or redemption.

(d) **Remaining Assets.** After the payment of all preferential amounts required to be paid to the holders of the Redeemable Preferred Stock, the remaining assets and funds of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Common Stock then outstanding.

5. OTHER PROVISIONS.

(a) **Notice.** In the event that the Corporation provides, or is required to provide, notice to any holder of Common Stock in accordance with the provisions of this Amended and Restated Certificate of Incorporation or the Corporation's Bylaws, the Corporation shall at the same time provide a copy of any such notice to each holder of outstanding shares of Redeemable Preferred Stock.

(b) **No Reissuance of Redeemable Preferred Stock.** No shares of Redeemable Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion, exchange or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares that the Corporation is authorized to issue.

(c) **Covenants.** So long as any shares of Redeemable Preferred Stock are outstanding the provisions of Section A.8, A.9, A.10 and A.11 of this Article IV shall apply in respect of shares of Redeemable Preferred Stock as if such provisions were set forth in this Section B.6(c), with each share of Redeemable Preferred Stock entitled to one vote per share for purposes of any consent or waiver granted by the holders of Redeemable Preferred Stock.

6. AUTOMATIC REDEMPTION.

(a) **Redemption.** Immediately upon and as of, and in all cases subject to, the closing of an initial public offering, the Corporation shall redeem all (and not less than all) of the outstanding shares of Series B Redeemable Preferred and Series A-1 Redeemable Preferred for a cash price per share equal to the Series B RPS Preference Amount or the Series A-1 RPS Preference Amount, respectively, specified in Section B.4.

(b) **Surrender.** Each holder of shares of Redeemable Preferred Stock to be redeemed shall surrender the certificate or certificates representing such shares to the Corporation, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto). In the event the certificate or certificates are lost, stolen or missing, such holder may deliver an affidavit of loss. Any such delivery shall be made at the principal executive office of the Corporation or such other place as the Corporation may from time to time designate by notice to the holders of Redeemable Preferred Stock. Each surrendered certificate shall be canceled and retired, and the Corporation shall thereafter make payment of the applicable redemption price by certified check or wire transfer.

C. SERIES A PREFERRED

1. **DESIGNATION.** A total of 10,000,000 shares of the Corporation's capital stock shall be designated as Series A Preferred.

2. **RIGHTS.** The voting powers, designations, preferences, powers and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions of the Series A Preferred will be identical to the Series A-1 Convertible Preferred.

3. **NO REISSUANCE OF SERIES A PREFERRED.** No shares of Series A Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion, exchange or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares that the Corporation is authorized to issue.

D. COMMON STOCK

1. **DESIGNATION.** A total of 66,067,812 shares of the Corporation's capital stock shall be designated as Common Stock.

2. **DIVIDEND RIGHTS.** The holders of Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available thereof, dividends with the holders of Convertible Preferred Stock and holders of Common Stock participating in such dividends, as contemplated by Sections A.2 and B.2.

3. VOTING RIGHTS.

(a) **General Rights.** The holder of each share of Common Stock shall be entitled to one vote for each such share as determined on the record date for the vote or consent of stockholders and, for so long as any shares of Convertible Preferred Stock remain outstanding, shall vote together with the holders of the Convertible Preferred Stock as a single class (on an as-

if converted to Common Stock basis) upon any items submitted to a vote of stockholders, except as otherwise required by law or by this Amended and Restated Certificate of Incorporation. Notwithstanding the provisions of Section 242(b)(2) of the DGCL, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of a majority of the outstanding shares of Common Stock and Convertible Preferred Stock voting together as a single class (on an as-if converted to Common Stock basis).

(b) **Election of Board of Directors.** Without limiting the effect of any additional rights they may have under Section D.3(a), the holders of outstanding shares of Common Stock, voting together as a separate class, shall be entitled to elect two (2) members (the "*Common Directors*") of the Board of Directors. The holders of Common Stock, voting together with the holders of outstanding Convertible Preferred Stock as a single class (on an as-if converted to Common Stock basis), shall be entitled to elect all of the Directors of the Corporation (other than the Common Directors and the Directors to be elected by the holders of Convertible Preferred Stock or Redeemable Preferred Stock as a separate class). Such Directors shall be elected by a plurality vote, with the elected candidates being the candidates receiving the greatest number of affirmative votes entitled to be cast. In any election of Directors, each holder of Common Stock and Convertible Preferred Stock will be entitled to cast one vote for or against each candidate with respect to each share of Common Stock held by such holder (determined as provided above in this paragraph), with votes cast against such candidate and votes withheld having no legal effect. The election of Directors shall occur at the annual meeting of holders of capital stock or at any special meeting called and held in accordance with the Bylaws of the Corporation, or by consent in lieu thereof in accordance with this Amended and Restated Certificate of Incorporation.

4. **LIQUIDATION RIGHTS.** Upon any Liquidation Event, after the payment or provision for payment of all debts and liabilities of the Corporation and all preferential amounts to which the holders of Convertible Preferred Stock and the Redeemable Preferred Stock are entitled under Sections A.4 and B.4 of this Article IV with respect to the distribution of assets of the Corporation, the remaining assets and funds of the Corporation available for distribution to its stockholders, if any, shall be distributed pro rata among the holders of shares of Common Stock then outstanding.

V.

A. Director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director of the Corporation, except for liability (a) for any breach of the Director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL, or (d) for any transaction from which the Director derived an improper personal benefit. If the DGCL is amended after the effective date of this Amended and Restated Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of Directors, then the liability of a Director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL.

B. Any repeal or modification of this Article V by the stockholders of the Corporation or by an amendment to the DGCL shall not adversely affect any right or protection existing at the time of such repeal or modification with respect to any acts or omissions occurring either before such repeal or modification of a person serving as a Director prior to or at the time of such repeal or modification.

VI.

A. The Corporation shall, to the fullest extent permitted by the DGCL, as the same may be amended and supplemented, indemnify any and all of its directors (including their heirs, executors, administrators or estate) under the DGCL from and against any and all of the expenses, liabilities or other matters referred to in or covered by the DGCL, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such position, and shall continue as to a person who has ceased to be a director and shall inure to the benefit of the heirs, executors and administrators of such a person.

B. To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of, and advancement of expenses to, officers, employees, other agents of the Corporation and any other persons to which the DGCL permits the Corporation to provide indemnification.

C. Any repeal or modification of this Article VI by the stockholders of the Corporation or by an amendment to the DGCL shall not adversely affect any right or protection existing at the time of such repeal or modification with respect to any acts or omissions occurring either before such repeal or modification of a person serving as a director prior to or at the time of such repeal or modification.

VII.

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, 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 Corporation shall be vested in its Board. The number of directors which shall constitute the whole Board shall be fixed by the Board in the manner provided in the Bylaws, subject to any restrictions which may be set forth in this Amended and Restated Certificate of Incorporation.

B. Except as provided in Section A.8, the Board is expressly empowered to adopt, amend or repeal the Bylaws of the Corporation. Subject to Section A.8, the stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Corporation; *provided however*, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Amended and Restated Certificate of Incorporation, the affirmative vote of (i) the holders of a majority of the voting power of all of the then-outstanding shares of

the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class on an as-if converted to Common Stock basis and (ii) the holders of a majority of the then-outstanding shares of Common Stock, voting as a separate class, shall be required to adopt, amend or repeal any provision of the Bylaws of the Corporation.

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

VIII.

In the event that a director of the Corporation who is also a partner or employee of an entity that is a holder of Convertible Preferred Stock and that is in the business of investing and reinvesting in other entities (each, a "*Fund*") acquires knowledge of a potential transaction or matter in such person's capacity as a partner or employee of the Fund and that may be a corporate opportunity for both the Corporation and such Fund (a "*Corporate Opportunity*"), then (i) such Corporate Opportunity shall belong to such Fund, (ii) such director shall, to the fullest extent permitted by law, have fully satisfied and fulfilled his duty of loyalty to the Corporation and its stockholders with respect to such Corporate Opportunity, and (iii) the Corporation, to the fullest extent permitted by law, waives any claim that such Corporate Opportunity constituted a corporate opportunity that should have been presented to the Corporation or any of its affiliates, provided, however, that subsections (i) and (ii) above shall not apply unless such director acts in good faith and consistently with such director's other fiduciary duties to the Corporation and its stockholders, and such opportunity was not offered to such person in his or her capacity as a director of the Corporation.

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