

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 10:23 PM 02/15/2006  
FILED 10:23 PM 02/15/2006  
SRV 060145069 - 3510963 FILE

MW-2

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION

OF

ADKNOWLEDGE, INC.

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The undersigned, Brett Brewer, hereby certifies that:

1. He is the duly elected and acting President of Adknowledge, Inc., a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on April 3, 2002, under the name of Virtumundo, Inc.
3. The Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

"ARTICLE I

"The name of this corporation is Adknowledge, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street in the City of Wilmington, Delaware 19801, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

ARTICLE IV

(A) Classes of Stock. 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 thirty million (30,000,000) shares, each with a par value of \$0.0001 per share. Twenty-five million four-hundred thousand (25,400,000) shares shall be Common Stock. Four million six-hundred thousand (4,600,000) shares shall be Preferred Stock.

(B) Rights, Preferences and Restrictions of Preferred Stock. The Preferred Stock authorized by this Amended and Restated Certificate of Incorporation (the "Restated Certificate") may be issued from time to time in one or more series. Four million six-hundred thousand (4,600,000) shares of Preferred Stock shall be designated "Series A Preferred Stock".

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

Subject to compliance with applicable protective voting rights which have been or may be granted to the Preferred Stock or series thereof in Certificates of Designations or the Corporation's Certificate of Incorporation, including, without limitation, Section 6 hereof, ("Protective Provisions"), but notwithstanding any other rights of the Preferred Stock or any series thereof, the rights, privileges, preferences and restrictions of any such additional series may be subordinated to, pari passu with (including, without limitation, inclusion in provisions with respect to liquidation and acquisition preferences, redemption and/or approval of matters by vote or written consent), or senior to any of those of any present or future class or series of Preferred or Common Stock. Subject to compliance with applicable Protective Provisions, the Board of Directors is also authorized to increase or decrease the number of shares of any series (other than the Series A Preferred Stock), prior or subsequent to the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

1. **Dividend Provisions.** Dividends of the Series A Preferred Stock shall be payable only when, as, and if declared by the Board of Directors out of assets legally available therefor. Subject to the rights of series of Preferred Stock which may from time-to-time come into existence, any dividends declared by the Board of Directors or paid by the Corporation shall be distributed among the holders of Series A Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock then held by each holder (assuming conversion of all such Preferred Stock into Common Stock). No right shall accrue to holders of shares of Series A Preferred Stock by reason of the fact that dividends on said shares are not declared in any prior year, nor shall any undeclared or unpaid dividend bear or accrue any interest.

2. **Liquidation.**

(a) **Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time-to-time come into existence, the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to \$10.4553 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series A Preferred Stock then held by them, plus declared but unpaid dividends (the "Liquidation Preference"). If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of series of Preferred Stock that may from time-to-time come into existence, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive. Notwithstanding the foregoing, if the Liquidation Preference is less than the amount the holders of the Series A Preferred Stock would have received as holders of Common Stock if all outstanding shares of

Series A Preferred Stock had been converted into shares of Common Stock immediately prior to such liquidation, dissolution or winding-up, then in lieu of the Liquidation Preference, the holders of Series A Preferred Stock shall be entitled (regardless of whether or not such Series A Preferred Stock is actually converted to Common Stock) to receive an amount per share equal to the amount per share such holders would have received as holders of Common Stock if all outstanding shares of Series A Preferred Stock had been converted into shares of Common Stock immediately prior to such liquidation, dissolution or winding-up.

(b) Remaining Assets. Upon the completion of the distribution required by Section 2(a) above and any other distribution that may be required with respect to series of Preferred Stock that may from time-to-time come into existence, if assets remain in the Corporation, the holders of the Common Stock of the Corporation shall receive all of the remaining assets of the Corporation.

(c) Certain Acquisitions.

(i) Deemed Liquidation. For purposes of this Section 2, and not by way of limitation, a liquidation, dissolution, or winding up of the Corporation shall be deemed to occur (A) if the Corporation shall sell, convey, or otherwise dispose of all or substantially all of its assets, property or business or merge with or into or consolidate with any other corporation, limited liability company or other entity (other than a wholly-owned subsidiary of the Corporation) or (B) upon the closing of the transfer (whether by merger, consolidation or otherwise), in one transaction or series of related transactions, to a person or group of affiliated persons (other than an underwriter of the Corporation's securities), of the Corporation's securities if, after such closing, such person or group of affiliated persons would hold 50% or more of the outstanding voting stock of the Corporation (or the surviving or acquiring entity) (any such transaction, a "Liquidation Transaction"), provided that none of the following shall be considered a Liquidation Transaction: (i) a merger effected exclusively for the purpose of changing the domicile of the Corporation, or (ii) a transaction in which the stockholders of the Corporation immediately prior to the transaction own 50% or more of the voting power of the surviving corporation following the transaction. The treatment of any particular transaction or series of transactions as a liquidation, dissolution or winding up of the Corporation may be waived by the vote or written consent of the holders of a majority of the outstanding Series A Preferred Stock (voting as a separate class).

(ii) Valuation of Consideration. In the event of a deemed liquidation as described in Section 2(c)(i) above, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

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

(1) If traded on a securities exchange or The Nasdaq Stock Market ("Nasdaq"), the per share value shall be deemed to be the average closing

price of a share of such securities on such exchange or Nasdaq over the twenty (20) trading day period ending three (3) trading days prior to the closing of the deemed liquidation;

(2) If actively traded over-the-counter, the per share value shall be deemed to be the average closing bid or sales price (whichever is applicable) of a share of such securities over the twenty (20) trading day period ending three (3) trading days prior to the closing of the deemed liquidation; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors (including one of the directors elected solely by the holders of the Series A Preferred Stock).

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as specified above in Section 2(c)(ii)(A) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors (including one of the directors elected solely by the holders of the Series A Preferred Stock).

(iii) The Corporation shall give each holder of record of Preferred Stock written notice of such impending Liquidation Transaction not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes to such terms and conditions. If the Corporation gives notice of material changes to such terms and conditions pursuant to the preceding sentence, the transaction shall in no event be consummated sooner than ten (10) days after the Corporation has given such notice; provided, however, that subject to compliance with the Delaware General Corporation Law such periods may be shortened or waived upon the written consent of the holders of a majority of the Series A Preferred Stock (voting as a separate class).

### 3. Redemption.

(a) Redemption at Option of Holders. At any time after February 16, 2012, the holders of a majority of the then outstanding shares of Series A Preferred Stock, acting together as a separate class (collectively, the "Majority Holders"), may require the Corporation to redeem all, but not less than all, of the outstanding shares of Series A Preferred Stock out of funds legally available therefor, in accordance with the provisions contained in this Section 3(a). If the funds of the Corporation legally available for redemption of such shares are insufficient to redeem the total number of shares to be redeemed, then such shares shall be redeemed on a pro rata basis, based on the number of shares of Series A Preferred Stock outstanding. The shares of Series A Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. Any time thereafter when additional

funds of the Corporation are legally available for the redemption of shares of Series A Preferred Stock, such funds will immediately be used to redeem the balance of the shares that the Corporation has become obliged to redeem but that it has not redeemed.

(b) Redemption Price. The price at which each share of Series A Preferred Stock will be redeemed will be an amount equal to (i) \$10.4553 (as adjusted for stock splits, stock dividends, reclassification and the like) plus all declared and unpaid dividends, plus (ii) such additional amount as is necessary to provide the holder of such share an IRR (as defined below) of fifteen percent (15%) (the "Series A Redemption Price"). For the purposes of calculating the Series A Redemption Price, the term "IRR" shall be calculated using the following formula:

$$IRR = (FV/PV)^{(1/n)} - 1, \text{ where}$$

"FV" equals the cash amount of the Series A Redemption Price;

"PV" equals \$10.4553 (as adjusted for stock splits, stock dividends, reclassification and the like); and

"n" equals the quotient of (A) the number of days from the Purchase Date (as defined below) to the applicable Preferred Stock Redemption Date (as defined below) at which such share is actually redeemed divided by (B) three hundred sixty-five (365).

(c) Exercise of Option to Redeem. If the Majority Holders elect to exercise their option to cause the Corporation to redeem all of the outstanding shares of Series A Preferred Stock pursuant to this Section 3, such Majority Holders must deliver written notice thereof of such election to the Corporation (a "Redemption Notice"). Following receipt of the Redemption Notice, the Corporation shall mail, first class postage prepaid, at least fifteen (15) but no more than thirty (30) days prior to each Preferred Stock Redemption Date, written notice (the "Redemption Date Notice") to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of Series A Preferred Stock, at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected on the applicable Preferred Stock Redemption Date, specifying the number of the shares of Series A Preferred Stock to be redeemed from such holder, the Series A Redemption Price and the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares to be redeemed. The redemption election, once made, is irrevocable. The Corporation may, at its election, effect the redemption of shares of Series A Preferred Stock in three equal installments (pro rata as among the Series A Preferred Stock based on the number of shares of Series A Preferred Stock outstanding) on the following dates: (1) one-hundred eighty (180) days after the date upon which the Corporation receives such Redemption Notice (or the first business day thereafter); (2) three hundred sixty (360) days after the date upon which the Corporation receives such Redemption Notice (or the first business day thereafter); and (3) five-hundred forty (540) days after the date upon which the Corporation receives such Redemption Notice (or the first business day thereafter). Each such date of redemption shall be referred to as a "Preferred Stock Redemption Date." Holders of shares of

Series A Preferred Stock will be required to present and surrender the certificate or certificates representing shares to be redeemed on each Preferred Redemption Date (duly endorsed for transfer) to the Corporation at the principal executive offices of the Corporation no later than three (3) business days prior to the applicable Preferred Stock Redemption Date. The Corporation shall pay the Series A Redemption Price to, or to the order of, the person whose name appears on such certificate or certificates so surrendered. If the number of shares represented by the certificate or certificates surrendered shall exceed the number of shares to be redeemed, the Corporation shall issue and deliver on the Preferred Stock Redemption Date to the person entitled thereto a certificate or certificates representing the unredeemed balance of such shares.

(d) **Effect of Redemption.** From and after each Preferred Stock Redemption Date, unless the Corporation shall default in providing for the payment of the Series A Redemption Price, all dividends (if any) shall cease to accrue with respect to the shares to be redeemed on such Preferred Stock Redemption Date pursuant to this Section 3, and all rights of the holders of any shares subject to redemption on such Preferred Redemption Date as shareholders of the Corporation, except the right to receive the Series A Redemption Price shall cease and terminate. Any shares of Series A Preferred Stock that are redeemed by the Corporation shall be retired and shall not be reissued.

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

(a) **Right to Convert.** Subject to Section 4(c), each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share and in any event on or prior to the fifth day prior to the Preferred Stock Redemption Date, if any, as may have been fixed in any Redemption Date Notice with respect to such share of Series A Preferred Stock, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$10.4553 by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share of Series A Preferred Stock shall be \$10.4553. Such initial Conversion Price shall be subject to adjustment as set forth in Section 4(d).

(b) **Automatic Conversion.** Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (i) except as provided below in Section 4(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "**Securities Act**"), the public offering price of which is not less than \$20.9106 per share (as adjusted for stock splits, stock dividends, reclassification and the like) and which results in aggregate gross cash proceeds to the Corporation of not less than \$50,000,000, or (ii) the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of Series A Preferred Stock, acting together as a separate class.

(c) **Mechanics of Conversion.** Before any holder of Series A Preferred Stock shall be entitled to convert such Preferred Stock into shares of Common Stock, the holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such series of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act the conversion may, at the option of any holder tendering such Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event any persons entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) **Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.** The Conversion Price of the Series A Preferred Stock shall be subject to adjustment from time to time as follows:

(i) **Issuance of Additional Stock below Purchase Price.** If the Corporation should issue, at any time after the date upon which any shares of Series A Preferred Stock were first issued (the "Purchase Date" with respect to such series), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i).

(A) **Adjustment Formula.** Whenever the Conversion Price is adjusted pursuant to this Section (4)(d)(i), the new Conversion Price shall be determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall include shares of Common Stock deemed issued pursuant to Section 4(d)(i)(E) below.

(B) Definition of "Additional Stock". For purposes of this Section 4(d)(i), "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Purchase Date) other than:

(1) Common Stock issued pursuant to stock dividends, stock splits or similar transactions, as described in Section 4(d)(ii) hereof;

(2) Shares of Common Stock issued or issuable to employees, consultants or directors of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of the Corporation;

(3) Capital stock, or options or warrants to purchase capital stock, issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings, commercial property lease transactions or similar transactions, provided that such issuances are for other than primarily equity financing purposes and are approved by the Board of Directors of the Corporation;

(4) Shares of Common Stock or Preferred Stock issuable upon exercise of warrants outstanding as of the date of this Amended and Restated Certificate of Incorporation;

(5) Capital stock, or warrants or options to purchase capital stock, issued in connection with bona fide acquisitions, mergers or similar transactions of commercial operating entities or assets by the Corporation, the terms of which are approved by the Board of Directors of the Corporation;

(6) Shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock;

(7) Shares of Common Stock issued or issuable in an underwritten public offering;

(8) Capital stock issued or issuable to an entity as a component of any business relationship with such entity for the purpose of (A) joint venture, technology licensing or development activities, (B) distribution, supply or manufacture of the Corporation's products or services or (C) any other arrangements involving corporate partners that are primarily for purposes other than raising capital, the terms of which business relationship with such entity are approved by the Board of Directors; and

(9) Shares of Common Stock issued or issuable with the affirmative vote of at least a majority of the then outstanding shares of Series A Preferred Stock, voting as a separate class.

(C) No Fractional Adjustments. No adjustment of the Conversion Price for the Series A Preferred Stock shall be made in an amount less than one-tenth of one cent per share, provided that any adjustments that are not required to be made by reason of



this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward..

(D) **Determination of Consideration.** In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors irrespective of any accounting treatment.

(E) **Deemed Issuances of Common Stock.** In the case of the issuance (whether before, on or after the applicable Purchase Date) of securities or rights convertible into or exercisable for, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (the "Common Stock Equivalents"), the following provisions shall apply for all purposes of this Section 4(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon conversion, exchange or exercise (assuming the satisfaction of any conditions to convertibility, exchangeability or exercisability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) of any Common Stock Equivalents and subsequent conversion, exchange or exercise thereof shall be deemed to have been issued at the time such securities were issued or such Common Stock Equivalents were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related Common Stock Equivalents (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion, exchange or exercise of any Common Stock Equivalents (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(D)).

(2) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon conversion, exchange or exercise of any Common Stock Equivalents including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of any series of Preferred Stock, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the conversion, exchange or exercise of such Common Stock Equivalents.

(3) Upon the termination or expiration of the convertibility, exchangeability or exercisability of any Common Stock Equivalents, the Conversion Price of any series of Preferred Stock, to the extent in any way affected by or

computed using such Common Stock Equivalents, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and Common Stock Equivalents that remain convertible, exchangeable or exercisable) actually issued upon the conversion, exchange or exercise of such Common Stock Equivalents.

(4) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Section 4(d)(i)(E)(1) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(i)(E)(2) or 4(d)(i)(E)(3).

(F) **No Increased Conversion Price.** Notwithstanding any other provisions of this Section 4(d)(i), except to the limited extent provided for in Sections 4(d)(i)(E)(2) and 4(d)(i)(E)(3), no adjustment of the Conversion Price pursuant to this Section 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) **Stock Splits and Dividends.** In the event the Corporation should at any time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or Common Stock Equivalents without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each of the Series A Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(E).

(iii) **Reverse Stock Splits.** If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for each of the Series A Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(c) **Other Distributions.** In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(ii), then, in each such case for the purpose of this Section 4(e), the holders of Series A Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the

determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) **Recapitalizations.** If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or Section 2) provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) **No Impairment.** The Corporation will not, by amendment of its Certificate of Incorporation (except in accordance with Section 6 hereof and applicable law) or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment.

(h) **No Fractional Shares and Certificate as to Adjustments.**

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded down to the nearest whole share. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A Preferred Stock pursuant to this Section 4, 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 such Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

(i) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) 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, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of such series of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of such series of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate.

(k) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

## 5. Voting Rights.

(a) The holder of each share of Series A Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote other than with respect to the election of directors as provided in Section 5(b). Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) The Board of Directors shall consist of five (5) members. So long as at least 1,147,743 shares of Series A Preferred Stock are outstanding (as adjusted for any stock splits, stock dividends, reclassifications and the like) (i) the holders of Series A Preferred Stock,

voting together as a class, shall be entitled to elect two (2) members of the Board of Directors, and (ii) the holders of the Common Stock, voting together as a class, shall be entitled to elect three (3) members of the Board of Directors. Thereafter, the holders of the Common Stock shall be entitled to elect all five (5) directors.

(c) In the case of any vacancy in the office of a director occurring among the directors elected by the holders of the Series A Preferred Stock or Common Stock pursuant to the second and third sentences of Section 5(b) hereof, the remaining director or directors so elected by the holders of the Series A Preferred Stock or Common Stock, as the case may be, may, by affirmative vote of a majority thereof (or the remaining director so elected if there is but one, or if there is no such director remaining, by the affirmative vote of the holders of a majority of the shares of that class) elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of the Series A Preferred Stock or Common Stock or any director so elected as provided in the preceding sentence hereof, may be removed during the aforesaid term of office, whether with or without cause, only by the affirmative vote of the holders of a majority of the Series A Preferred Stock or Common Stock, as the case may be.

6. **Protective Provisions.** Subject to the rights of series of Preferred Stock which may from time to time come into existence, so long as at least 1,147,743 shares of Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, reclassification and the like), the Corporation shall not (whether by merger, amendment, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, voting as a separate class:

(a) effect, or agree to effect, a Liquidation Transaction unless (A) holders of the Series A Preferred Stock would receive in such Liquidation Transaction, by reason of their ownership of the Series A Preferred Stock, per share consideration with a fair market value (as determined pursuant to Section 2(c)(ii)) of at least \$15.68295 (as adjusted for stock splits, stock dividends, reclassification and the like) and (B) the consideration payable to such holders of Series A Preferred Stock consists solely of cash or Marketable Securities (as defined below);

(b) incur indebtedness for borrowed money in excess of \$5 million, excluding the incurrence by the Corporation of indebtedness in connection with equipment leases, capital leases approved by the Board of Directors or up to \$5 million in principal amount of indebtedness pursuant to the Debt Financing (as defined in that certain Series A Preferred Stock Purchase Agreement dated on or about February 16, 2006 by and among the Corporation and certain purchasers of Series A Preferred Stock (the "Purchase Agreement"));

(c) authorize or issue, or obligate itself to issue, any other equity security (including any security (other than Series A Preferred Stock) whether equity, convertible debt or a unit of debt and equity securities, convertible into or exercisable for any equity security) having a preference over, or being on a parity with, the Series A Preferred Stock with respect to voting, redemption, dividends, conversion or upon liquidation;

(d) redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock other than in accordance with the redemption provisions of this Restated Certificate and other than the Redemption (as defined in the Purchase Agreement); provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from (i) employees, officers, directors, consultants or other persons (other than Scott Lynn, his immediate family members, or affiliates of any of the foregoing) performing services for the Corporation or any subsidiary pursuant to agreements (the form of which was approved by the Corporation's Board of Directors or, for agreements entered into after the date of the original issuance of the Series A Preferred Stock, by the compensation committee of the Corporation's Board of Directors) under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal or, (ii) Scott Lynn, his immediate family members, or affiliates of any of the foregoing, pursuant to agreements (the form of which was approved by the Corporation's Board of Directors or, for agreements entered into after the date of the original issuance of the Series A Preferred Stock, the compensation committee of the Corporation's Board of Directors) under which the Corporation has the option to repurchase such shares at cost or lower upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal;

(e) amend or alter the Corporation's Certificate of Incorporation or Bylaws;

(f) declare or pay any dividends or other distributions to the Corporation's stockholders, other than the Redemption;

(g) enter into any transactions with affiliates of the Corporation or any stockholder of the Corporation holding five percent (5%) or more of the Corporation's outstanding Common Stock (on an as-converted basis), other than (i) the Redemption, (ii) compensation of officers, directors and consultants of the Corporation that has been approved by the Compensation Committee of the Board of Directors, and (iii) repurchase of shares of Common Stock from (x) employees, officers, directors, consultants or other persons (other than Scott Lynn, his immediate family members, or affiliates of any of the foregoing) performing services for the Corporation or any subsidiary pursuant to agreements (the form of which was approved by the Corporation's Board of Directors or, for agreements entered into after the date of the original issuance of the Series A Preferred Stock, the compensation committee of the Corporation's Board of Directors) under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal or, (y) Scott Lynn, his immediate family members, or affiliates of any of the foregoing, pursuant to agreements (the form of which was approved by the Corporation's Board of Directors or, for agreements entered into after the date of the original issuance of the Series A Preferred Stock, the compensation committee of the Corporation's Board of Directors) under which the Corporation has the option to repurchase such shares at cost or lower upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal;

(h) dispose of or transfer, or agree to dispose of or transfer, assets with an aggregate fair market value of more than \$10 million, other than in the ordinary course of business; or

(i) increase or decrease the authorized number of directors of the Corporation.

For the purposes of Section 6(a) above, the term "Marketable Securities" shall mean securities that are both (x) not subject to an underwriter lock-up or similar trading or contractual restriction on transfer and are traded on a national securities exchange, NASDAQ or over-the-counter and (y) (1) registered under the Securities Act and immediately saleable without restriction as to volume by the holder thereof or (2) either (A) transferable by the holder thereof (together with any affiliate of such holder with whom such holder must aggregate its sales under Rule 144 under the Securities Act) in any three (3) month period without registration pursuant to Rule 144 and the holder thereof holds one percent (1%) or less of the Corporation's outstanding Common Stock, and transferable by the holder thereof without restriction under Rule 145 under the Securities Act or (B) immediately transferable by the holder thereof under a resale registration statement under the Securities Act.

7. Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation.

(C) Common Stock

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors. Such dividends shall be distributed as provided in Section 1 of Article IV(B).

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, or the occurrence of a Liquidation Transaction, the assets of the Corporation shall be distributed as provided in Section 2 of Article IV(B).

3. Voting Rights. Each holder of Common Stock shall have the right to one vote per share of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

4. Redemption. The Common Stock is not redeemable at the option of the holder; provided, however, that this restriction will not be deemed to restrict the Redemption.

#### ARTICLE V

Except as expressly limited in this Restated Certificate, the Board of Directors of the Corporation is expressly authorized to make, alter or repeal Bylaws of the Corporation.

#### ARTICLE VI

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

#### ARTICLE VII

(A) To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, 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.

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

(C) Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision."

\* \* \*



The foregoing Amended and Restated Certificate of Incorporation has been duly adopted by this corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

Executed at Kansas City, Missouri February 15, 2006



Brett Brewer, President

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
ADKNOWLEDGE, INC.