

THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ARPU, INC.

ARPU, Inc. hereby certifies that:

ONE: The original name of this company is ARPU, Inc., and the date of filing the original Certificate of Incorporation of this company with the Secretary of State of the State of Delaware was November 17, 2004. An Amended and Restated Certificate of Incorporation of ARPU, Inc. was filed on May 2, 2005. A Second Amended and Restated Certificate of Incorporation of ARPU, Inc. was filed on May 26, 2006.

TWO: The Second Amended and Restated Certificate of Incorporation of this company is hereby further amended and restated to read as follows:

FIRST: The name of this company is ARPU, INC. (the "*Company*" or the "*Corporation*").

SECOND: The address of the registered office of this Company in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, Zip Code 19808, and the name of the registered agent of this Corporation in the State of Delaware at such address is The Company Corporation.

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

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 12,500,000 shares of Common Stock, \$0.001 par value per share ("*Common Stock*"), and (ii) 7,429,069 shares of Preferred Stock, \$0.001 par value per share ("*Preferred Stock*").

The following is a statement of the powers, privileges and rights, and the qualifications, limitations or restrictions thereof, in respect of each class of capital stock of the Corporation. Unless otherwise indicated, references to "Sections" or "Subsections" in this Article refer to sections and subsections of this Article Fourth.

A. COMMON STOCK

1. GENERAL.

The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. VOTING.

(a) The holders of the Common Stock are entitled to one (1) vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of

meetings). There shall be no cumulative voting. 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 shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

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

B. PREFERRED STOCK

A total of 2,000,000 shares of the Corporation's Preferred Stock shall be designated as Series A Convertible Preferred Stock (the "*Series A Preferred Stock*"), a total of 3,075,815 shares of the Corporation's Preferred Stock shall be designated as Series B Convertible Preferred Stock (the "*Series B Preferred Stock*"), and a total of 2,353,254 shares of the Corporation's Preferred Stock shall be designated as Series C Convertible Preferred Stock (the "*Series C Preferred Stock*").

The Preferred Stock shall have the following rights, preferences, powers, privileges and restrictions, qualifications and limitations.

1. DIVIDEND RIGHTS.

(a) Holders of Series C Preferred Stock, on a pari passu basis with the holders of Series B Preferred Stock and Series A Preferred Stock but in preference to the holders of Common Stock, shall be entitled to receive, out of funds that are legally available therefor, dividends at the rate of eight percent (8%) (the "*Series C Preferred Dividends*") of the Original Series C Issue Price (as defined below) per annum on each outstanding share of Series C Preferred Stock, which dividends shall be payable in accordance with Section B.1(d). Such dividends shall be cumulative and shall accrue whether or not declared by the Board of Directors (the "*Board*") and whether or not there are then earnings and profits of the Company available for the payment of such dividends.

(b) Holders of Series B Preferred Stock, on a pari passu basis with the holders of Series C Preferred Stock and Series A Preferred Stock but in preference to the holders of Common Stock, shall be entitled to receive, out of funds that are legally available therefor, dividends at the rate of eight percent (8%) (the "*Series B Preferred Dividends*") of the Original Series B Issue Price (as defined below) per annum on each outstanding share of Series B Preferred Stock, which dividends shall be payable in accordance with Section B.1(d). Such dividends shall be cumulative and shall accrue whether or not declared by the Board and whether or not there are then earnings and profits of the Company available for the payment of such dividends.

(c) Holders of Series A Preferred, on a pari passu basis with the holders of Series C Preferred Stock and Series B Preferred Stock but in preference to the holders of Common Stock, shall be entitled to receive, out of funds that are legally available therefor, dividends at the rate of eight percent (8%) (the "*Series A Preferred Dividends*" and together with the Series C Preferred Dividends and the Series B Preferred Dividends, the "*Series Preferred Dividends*") of the Original Series A Issue Price (as defined below) per annum on each outstanding share of Series A Preferred, which dividends shall be payable in accordance with Section B.1(d). Such dividends shall be cumulative and shall accrue whether or not declared by the Board and whether or not there are then earnings and profits of the Company available for the payment of such dividends.

(d) All accrued and unpaid dividends on the shares of Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock will be payable: (i) when, as and if declared by the Board out of funds legally available therefor; (ii) immediately prior to the closing of a Liquidation Event, Acquisition, or Asset Transfer under Section B.3 and/or B.4; or (iii) immediately prior to the closing of a Qualified IPO (as defined in Section B.5(l)). All the Series Preferred Dividends shall be payable in cash or, at the election of the holders of the Majority Holders (as defined below), in Common Stock at the then fair market value of the Common Stock (as determined by the Board in good faith on the date of issuance). If the foregoing would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the fair market value of one share of Common Stock (as determined by the Board) on the date of conversion. "*Majority Holders*" means any of the following holders of capital stock of the Company: (i) the holders of a majority the Series A Preferred Stock and the holders of a majority of the Series B Preferred Stock, voting as separate classes; or (ii) the holders of a majority the Series A Stock and the holders of at least 55% of the Series C Preferred Stock, voting as separate classes; or (iii) the holders of a majority the Series B Stock and the holders of at least 55% of the Series C Preferred Stock, voting as separate classes.

(e) The "*Original Series C Issue Price*" of the Series C Preferred Stock shall be \$3.7106 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof).

(f) The "*Original Series B Issue Price*" of the Series B Preferred Stock shall be \$1.6329 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof).

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

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

(i) acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares at cost (or the lesser of cost or fair market value) upon termination of services to the Company, which acquisitions are approved by the Board (including at least two Preferred Designees (as defined below));

(ii) acquisitions of Common Stock in exercise of the Company's right of first refusal to repurchase such shares, which acquisitions are approved by the Board (including at least two Preferred Designees); or

(iii) distributions to holders of Common Stock in accordance with Sections B.3, B.4 and/or B.6.

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

(i) acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares at cost (or the lesser of cost or fair market value) upon termination of services to the Company, which acquisitions are approved by the Board (including at least two Preferred Designees);

(ii) acquisitions of Common Stock in exercise of the Company's right of first refusal to repurchase such shares, which acquisitions are approved by the Board (including at least two Preferred Designees); or

(iii) distributions to holders of Common Stock in accordance with Sections B.3, B.4 and/or B.6.

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

(i) acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares at cost (or the lesser of cost or fair market value) upon termination of services to the Company, which acquisitions are approved by the Board (including at least two Preferred Designees);

(ii) acquisitions of Common Stock in exercise of the Company's right of first refusal to repurchase such shares, which acquisitions are approved by the Board (including at least two Preferred Designees); or

(iii) distributions to holders of Common Stock in accordance with Sections B.3, B.4 and/or B.6.

(k) In the event dividends are paid on any share of Common Stock, the Company shall pay an additional dividend on all outstanding shares of Preferred Stock in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

(l) The provisions of Sections B.1(h), B.1(i), B.1(j) and B.1(k) shall not apply to a dividend payable solely in Common Stock to which the provisions of Section B.5(f) hereof are applicable, or any repurchase of any outstanding securities of the Company that is approved by the Board including at least two Preferred Designees.

(m) Whenever a dividend provided for in this Section 1 shall be payable in property other than cash, the value of such dividend shall be the fair market value of such distribution as determined by the Board in good faith.

2. VOTING RIGHTS.

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

(b) **Separate Vote of Preferred Stock.** For so long as at least 1,483,058 shares of Preferred Stock (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Preferred Stock after the date hereof) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of (i) at least a majority of the Preferred Stock, voting together on an as-if-converted to Common Stock basis, will be required to approve a Qualified Sale (as defined in Section B.3 hereof) and (ii) at least 75% of the Preferred Stock, voting together on an as-if-converted to Common Stock basis, will be required to approve a Liquidation, an Asset Transfer, or an Acquisition (each as defined in Section B.4 hereof) that is not a Qualified Sale.

(c) **Separate Vote of Majority Holders.** For so long as at least 1,483,058 shares of Preferred Stock (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Preferred Stock after the date hereof) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the Majority Holders shall be necessary for effecting or validating the following actions (whether by merger, recapitalization, reclassification, consolidation, or otherwise):

(i) Any issuance or deemed issuance of any equity or equity-linked securities, except as expressly contemplated hereby (other than strategic corporate partner,

employee stock grant, equipment financing, acquisition of another company offerings approved by the Board, including at least two Preferred Designees);

(ii) Any action that changes the principal nature of the Company's business;

(iii) Any action that authorizes, effects (or permits any subsidiary to authorize or effect) the sale in any manner, directly or indirectly, of any material business unit or going concern of the Company (or any subsidiary) to any person or entity; or

(iv) Any action that results in the issuance of any indebtedness or any debt securities (x) in a principal amount aggregating in excess of \$1,000,000 or (y) with an interest rate greater than fifty percent (50%) per annum or any sort of multiple payment or return feature; *provided however*, that any debt issued below this level must be limited to what can be secured by accounts receivable financing from a bank

(d) Separate Vote of Series C Preferred Stock. For so long as at least 470,650 shares of Series C Preferred Stock (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series C Preferred Stock after the date hereof) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least 55% of the outstanding Series C Preferred Stock, voting as a separate class, shall be necessary for effecting or validating the following actions (whether by merger, recapitalization, reclassification, consolidation, or otherwise):

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

(ii) Any action that results in the exchange, reclassification, or cancellation of all or any shares of Preferred Stock (other than the conversion of Preferred Stock into shares of Common Stock as provided in Section B.5 below);

(iii) Any authorization, creation, or designation of any new class or series of stock or any other securities convertible into equity securities of the Company ranking on a parity with or senior to the Series C Preferred Stock in right of redemption, liquidation preference, voting or dividend rights or any other material rights senior to or on parity with those of the Series C Preferred Stock or any increase in the authorized or designated number of any such new class or series;

(iv) Any redemption, repurchase, payment or declaration of dividends or other distributions with respect to Common Stock or Preferred Stock other than dividends required pursuant to Section B.1 hereof (except for acquisitions of Common Stock by the Company permitted by Section B.1(h)(i), (ii) and (iii), Section B.1(i)(i), (ii) and (iii) and Section B.1(j)(i), (ii) and (iii) hereof and redemptions required by Section B.6 hereof);

(v) Any voluntary dissolution or liquidation of the Company or any of its subsidiaries; or

(vi) Any increase or decrease in the authorized number of members of the Company's Board.

(e) **Separate Vote of Series B Preferred Stock.** For so long as at least 612,407 shares of Series B Preferred Stock (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series B Preferred Stock after the date hereof) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding Series B Preferred Stock, voting as a separate class, shall be necessary for effecting or validating the following actions (whether by merger, recapitalization, reclassification, consolidation, or otherwise):

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

(ii) Any action that results in the exchange, reclassification, or cancellation of all or any shares of Preferred Stock (other than the conversion of Preferred Stock into shares of Common Stock as provided in Section B.5 below);

(iii) Any authorization, creation, or designation of any new class or series of stock or any other securities convertible into equity securities of the Company ranking on a parity with or senior to the Series B Preferred Stock in right of redemption, liquidation preference, voting or dividend rights or any other material rights senior to or on parity with those of the Series B Preferred Stock or any increase in the authorized or designated number of any such new class or series;

(iv) Any redemption, repurchase, payment or declaration of dividends or other distributions with respect to Common Stock or Preferred Stock other than dividends required pursuant to Section B.1 hereof (except for acquisitions of Common Stock by the Company permitted by Section B.1(h)(i), (ii) and (iii), Section B.1(i)(i), (ii) and (iii) and Section B.1(j)(i), (ii) and (iii) hereof and redemptions required by Section B.6 hereof);

(v) Any voluntary dissolution or liquidation of the Company or any of its subsidiaries; or

(vi) Any increase or decrease in the authorized number of members of the Company's Board.

(f) **Separate Vote of Series A Preferred Stock.** For so long as at least 400,000 shares of Series A Preferred Stock (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series Preferred after the filing date hereof) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding Series A Preferred Stock, voting as a separate class, shall be necessary for effecting or validating the following actions (whether by merger, recapitalization, reclassification, consolidation, or otherwise):

(i) Any action that results in the exchange, reclassification, or cancellation of all or any shares of Preferred Stock (other than the conversion of the Preferred Stock into shares of Common Stock as provided in Section B.5 below):

(ii) Any redemption, repurchase, payment or declaration of dividends or other distributions with respect to Common Stock or Preferred Stock other than dividends required pursuant to Section B.1 hereof (except for acquisitions of Common Stock by the Company permitted by Section B.1(h)(i), (ii) and (iii), Section B.1(i)(i), (ii) and (iii) and Section B.1(j)(i), (ii) and (iii) hereof and redemptions required by Section B.6 hereof); or

(iii) Any voluntary dissolution or liquidation of the Company or any of its subsidiaries.

(g) **Election of Board of Directors.** The directors elected pursuant to Sections B.2(g)(i), (ii) and (iii) below are referred to herein as the “*Preferred Designees*.”

(i) For so long as any shares of Series C Preferred Stock remain outstanding, the holders of the Series C Preferred Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board at each meeting or pursuant to each consent of the Company’s stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(ii) For so long as any shares of Series B Preferred Stock remain outstanding, the holders of the Series B Preferred Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board at each meeting or pursuant to each consent of the Company’s stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(iii) For so long as any shares of Series A Preferred Stock remain outstanding, the holders of the Series A Preferred Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board at each meeting or pursuant to each consent of the Company’s stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(iv) Except as expressly provided in Section A.2(b) and Sections B.2(g)(i), (ii) and (iii), the holders of Common Stock and Preferred Stock, voting together as a single class on an as-if-converted basis, shall be entitled to elect all remaining members of the Board at each meeting or pursuant to each consent of the Company’s stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(v) Notwithstanding anything contained herein to the contrary, if any Event of Default (as defined below) occurs and continues for ninety (90) days, and until such Event of Default is cured, the holders of the then-outstanding Series B Preferred Stock and Series C Preferred Stock, voting together as a single class and on an as-if-converted to Common Stock basis, shall have the right to elect such number of members of the Board such that nominees of the Series B Preferred Stock and Series C Preferred Stock (including directors elected pursuant to Sections B.2(g)(i) and B.2(g)(ii)) constitute a majority of the Board. For the

purposes hereof, an “*Event of Default*” shall mean (a) the filing of any petition, whether voluntary or involuntary, seeking the reorganization or liquidation of the Corporation under any provision of the Federal Bankruptcy Code or any other federal or state reorganization, insolvency or debtor relief law, (b) the appointment of any receiver, liquidator or trustee for the Corporation or any of its properties by a court order and which appointment is not vacated within forty-five (45) days, or (c) the Corporation is adjudicated insolvent, or the Corporation shall make an assignment for the benefit of any of its creditors, admit in writing an inability to pay debts when they become due in the ordinary course of its business, or consent to the appointment of a receiver, trustee or liquidator for the Corporation or all or any part of the property of the Corporation.

3. LIQUIDATION RIGHTS.

(a) Subject to Section B.3(c) below, upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary (a “*Liquidation Event*”), before any distribution or payment shall be made to the holders of Common Stock, the holders of Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock shall be entitled to be paid out of the assets of the Company legally available for distribution for each share of Preferred Stock held by them, an amount per share of (i) Series C Preferred Stock equal to the Original Series C Issue Price plus all accrued dividends and/or all declared and unpaid dividends on the Series C Preferred Stock (the “*Series C Liquidation Preference*”), (ii) Series B Preferred Stock equal to the Original Series B Issue Price plus all accrued dividends and/or all declared and unpaid dividends on the Series B Preferred Stock (the “*Series B Liquidation Preference*”), and (iii) Series A Preferred Stock equal to the Original Series A Issue Price plus all accrued dividends and/or all declared and unpaid dividends on the Series A Preferred Stock (the “*Series A Liquidation Preference*” and together with the Series B Liquidation Preference and the Series C Liquidation Preference, the “*Liquidation Preferences*”). If, upon any such Liquidation Event, the assets of the Company shall be insufficient to make payment in full to all holders of Preferred Stock of the Liquidation Preferences, then such assets (or consideration) shall be distributed among the holders of Preferred Stock at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled if the Liquidation Preferences had been paid in full.

(b) Subject to Section B.3(c) below, after the payment of the full Liquidation Preferences, the assets of the Company legally available for distribution in such Liquidation Event (or the consideration received by the Company or its stockholders in such Acquisition or Asset Transfer), if any, shall be distributed ratably to the holders of the Common Stock and Preferred Stock on an as-if-converted to Common Stock basis.

(c) Notwithstanding anything to the contrary in Sections B.3(a) and B.3(b), in connection with a Qualified Sale, the assets of the Company legally available for distribution shall be distributed ratably to the holders of the Common Stock and Preferred Stock on an as-if-converted to Common Stock basis and no holder of Preferred Stock shall be entitled to receive any portion of such holder’s Liquidation Preferences. As used herein, the term “*Qualified Sale*” will mean any Liquidation Event (or Acquisition or Asset Transfer) in which the proceeds legally available for distribution to Company stockholders at closing or within five business days thereafter are at least \$150 million as determined by the Board in

good faith (the "*Distribution*"); provided that in making the determination as to whether \$150 million is available for Distribution at closing or within five business days thereafter, the Board will (i) exclude the following: (A) all amounts in excess of 12.5% of the aggregate purchase price that are placed into a general escrow account (i.e. an escrow account securing indemnity obligations in connection with breaches of representations and warranties and covenants) in connection with such Qualified Sale, (B) all amounts that are placed into a special escrow account (i.e. an escrow account securing indemnity obligations related to specified and/or identified risks or matters) or (C) all amounts that are subject to an earnout or other future payment contingencies (such as the achievement of milestones) and (ii) not exclude amounts that are not distributed or made available for distribution by the acquiror due to the failure of one or more Company security holders to tender their securities or to execute and return a reasonable letter of transmittal.

4. ASSET TRANSFER OR ACQUISITION RIGHTS.

(a) An Acquisition or Asset Transfer shall be deemed to be a liquidation of the Company, unless the holders of (x) a majority of the outstanding Series A Preferred Stock, voting as a single class, (y) a majority of the outstanding Series B Preferred Stock, voting as a single class, and (z) at least 55% of the outstanding Series C Preferred Stock, voting as a single class, each elect otherwise by written notice given to the Company at least five (5) days prior to the effective date of any such Acquisition or Asset Transfer (a "*Deemed Liquidation*"). The Company shall not have the power to effect any transaction constituting a Deemed Liquidation unless the agreement or plan of merger or consolidation provides that the consideration payable to the stockholders of the Company shall be allocated among the holders of capital stock of the Company in accordance with Sections B.3(a), B.3(b) and B.3(c) above. The amount deemed paid or distributed to holders of capital stock of the Company upon any Deemed Liquidation shall be the cash or the value of the property, rights, or securities paid or distributed to such holders by the Company or the acquiring person, firm, or other entity. The value of such property, rights or securities shall be its fair market value as determined in good faith by the Board on the date such determination is made.

(b) For the purposes of this Section B.4:

(i) "*Acquisition*" shall mean (A) any consolidation or merger (x) of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, or (y) in which a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation, other than any such transaction in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, continue to hold at least a majority of the voting power of the surviving entity (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions to which the Company is a party in which in excess of fifty percent (50%) of the Company's voting power is transferred; provided that an Acquisition shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof; and

(ii) “*Asset Transfer*” shall mean the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or a majority of the assets of the Corporation and its subsidiaries taken as a whole, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

(c) In the event of an Acquisition pursuant to Section B.4(b)(i)(y) or an Asset Transfer pursuant to Section B.4(b)(ii) above (each a “*Deemed Liquidation Event*”), if the Corporation does not effect a dissolution of the Corporation under the DGCL within ninety (90) days after such Deemed Liquidation Event, then (A) the Corporation shall deliver a written notice to each holder of Preferred Stock no later than the ninetieth (90th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (B) to require the redemption of such shares of Preferred Stock, and (B) if the holders of a majority of the then outstanding shares of Preferred Stock, voting together as a single class, so request in a written instrument delivered to the Corporation not later than one hundred twenty-five (125) days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board) (the “*Net Proceeds*”) to redeem, to the extent legally available therefor, on the one hundred fiftieth (150th) day after such Deemed Liquidation Event (the “*Liquidation Redemption Date*”), all outstanding shares of Preferred Stock at a price per share equal to the amount that such holders are entitled to receive in accordance with Sections B.3(a), B.3(b) and B.3(c) above. In the event of a redemption pursuant to the preceding sentence, if the Net Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, or if the Corporation does not have sufficient lawfully available funds to effect such redemption, the Corporation shall redeem a pro rata portion of each holder’s shares of Preferred Stock, to the fullest extent of such Net Proceeds or such lawfully available funds, as the case may be until all shares of Preferred Stock are redeemed in full (with any partial payment ratably in proportion to the full amounts to which they would otherwise be respectively entitled if the amounts that such holders are entitled to receive in accordance with Section B.3(a), B.3(b) and B.3(c) had been paid in full). The provisions of Section B.6(a) through (e) below shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Preferred Stock pursuant to this Section B.4(c). Prior to the distribution or redemption provided for in this Section B.4(c), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in the ordinary course of business.

(d) The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board.

5. CONVERSION RIGHTS.

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

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

(b) Conversion Rate.

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

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

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

(c) Conversion Price.

(i) The conversion price for the Series C Preferred Stock shall initially be the Original Series C Issue Price (the "*Series C Preferred Conversion Price*"). Such initial Series C Preferred Conversion Price shall be adjusted from time to time in accordance with this Section B.5. All references to the Series C Preferred Conversion Price herein shall mean the Series C Preferred Conversion Price as so adjusted.

(ii) The conversion price for the Series B Preferred Stock shall initially be the Original Series B Issue Price (the "*Series B Preferred Conversion Price*"). Such

initial Series B Preferred Conversion Price shall be adjusted from time to time in accordance with this Section B.5. All references to the Series B Preferred Conversion Price herein shall mean the Series B Preferred Conversion Price as so adjusted.

(iii) The conversion price for the Series A Preferred Stock shall initially be the Original Series A Issue Price (the "*Series A Preferred Conversion Price*"). Such initial Series A Preferred Conversion Price shall be adjusted from time to time in accordance with this Section B.5. All references to the Series A Preferred Conversion Price herein shall mean the Series A Preferred Conversion Price as so adjusted. Each of the Series A Conversion Price, the Series B Conversion Price and the Series C Conversion Price is sometimes referred to herein as a "*Conversion Price*".

(d) **Mechanics of Conversion.** Each holder of Preferred Stock who desires to convert the same into shares of Common Stock pursuant to this Section B.5 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Preferred Stock, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Preferred Stock being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board as of the date of such conversion), any declared and unpaid dividends on the shares of Preferred Stock being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Preferred Stock. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date. Any accrued but unpaid dividends on the shares of Preferred Stock being converted into Common Stock pursuant to this Section B.5(d) shall be terminated and canceled.

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

(f) Adjustment for Common Stock Dividends and Distributions.

If at any time or from time to time on or after the Original Series C Issue Date the Company pays to holders of Common Stock a dividend or other distribution in additional shares of Common Stock without a corresponding dividend or other distribution to holders of any series of Preferred Stock, the Conversion Price of such series of Preferred Stock then in effect shall be decreased as of the time of such issuance, as provided below:

(i) The Conversion Price of such series of Preferred Stock shall be adjusted by multiplying such Conversion Price then in effect by a fraction equal to:

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

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

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

(iii) If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price of such series of Preferred Stock shall be recomputed accordingly as of the close of business on such record date and thereafter such Conversion Price shall be adjusted pursuant to this Section B.5(f) to reflect the actual payment of such dividend or distribution.

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

and the number of shares issuable upon conversion of the Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

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

(i) If at any time or from time to time after the Original Series C Issue Date the Company issues or sells, or is deemed by the express provisions of this Section B.5(h) to have issued or sold, Additional Shares of Common Stock (as defined below), other than as provided in Section B.5(e), B.5(f) or B.5(g) above, for an Effective Price (as defined below) less than the then effective Series C Preferred Conversion Price, Series B Preferred Conversion Price or the Series A Preferred Conversion Price, as applicable (a "*Qualifying Dilutive Issuance*"), then and in each such case, the then existing Series C Preferred Conversion Price, Series B Preferred Conversion Price and/or the Series A Preferred Conversion Price, as applicable, shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C)$$

For purposes of the foregoing formula, the following definitions shall apply:

(1) CP_2 shall mean the applicable Conversion Price in effect immediately after such issue of Additional Shares of Common Stock;

(2) CP_1 shall mean the applicable Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

(3) "A" shall mean the number of shares of Common Stock outstanding and deemed outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of all rights, warrants or options outstanding immediately prior to such issue or upon conversion of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding rights, warrants or options therefor) immediately prior to such issue);

(4) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP_1 (determined by dividing the Aggregate Consideration received by the Corporation in respect of such issue by CP_1); and

(5) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

(ii) For the purpose of making any adjustment required under this Section B.5(h), the aggregate consideration received by the Company for any issue or sale of securities (the "*Aggregate Consideration*") shall be defined as: (A) to the extent it consists of cash, be computed at the gross amount of cash received by the Company before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the

Company in connection with such issue or sale and without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined below) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

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

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

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

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

(D) No further adjustment of the Conversion Price of a series of Preferred Stock adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common

Stock or the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Conversion Price of a series of Preferred Stock adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the applicable Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, *provided* that such readjustment shall not apply to prior conversions of Preferred Stock.

(iv) For the purpose of making any adjustment to the Conversion Price of a series of Preferred Stock required under this Section B.5(h), "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section B.5(h) (including shares of Common Stock subsequently reacquired or retired by the Company), other than:

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

(B) shares of Common Stock or Convertible Securities issued after the Original Series C Issue Date to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary pursuant to the Company's 2005 Stock Plan, as amended (the "*Plan*"), or such other stock purchase or stock option plans or other arrangements that are approved by the Board (including at least two Preferred Designees) (collectively with the Plan, the "*Option Plans*");

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

(D) shares of Common Stock or Convertible Securities issued for consideration other than cash pursuant to a merger, consolidation, acquisition, strategic alliance or similar business combination approved by the Board (including at least two Preferred Designees);

(E) shares of Common Stock or Convertible Securities issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by the Board (including at least two Preferred Designees);

(F) shares of Common Stock or Convertible Securities issued to third-party service providers approved by the Board; in exchange for or as partial consideration for services rendered to the Company; and

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

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

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

(i) **Waiver of Antidilution Protection.** Notwithstanding anything to the contrary, any provision of Section B.5(h) and any adjustments made or required to be made to the Series C Preferred Conversion Price may be waived on behalf of all shares of Series C Preferred Stock by the vote or written consent of the holders of at least 55% of the outstanding Series C Preferred Stock, voting as a separate class. Notwithstanding anything to the contrary, any provision of Section B.5(h) and any adjustments made or required to be made to the Series B Preferred Conversion Price may be waived on behalf of all shares of Series B Preferred Stock by the vote or written consent of the holders of a majority of the outstanding Series B Preferred Stock, voting as a separate class. Notwithstanding anything to the contrary, any provision of Section B.5(h) and any adjustments made or required to be made to the Series A Preferred Conversion Price may be waived on behalf of all shares of Series A Preferred Stock by the vote or written consent of the holders of a majority of the outstanding Series A Preferred Stock, voting as a separate class.

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

(k) Notices of Record Date. Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section 4) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section B.4), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Preferred Stock at least ten (10) days prior to (x) the record date, if any, specified therein; or (y) if no record date is specified, the date upon which such action is to take effect (or, in either case, such shorter period approved by the holders of a majority of the outstanding Preferred Stock) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(l) Automatic Conversion.

(i) Each share of Series C Preferred Stock shall automatically be converted into shares of Common Stock, based on the then-effective Series C Preferred Conversion Price, (A) at any time upon the affirmative election of the holders of at least 55% of the outstanding shares of the Series C Preferred Stock, voting as a separate class, or (B) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least four (4) times the sum of (x) the Original Series C Issue Price (as adjusted for stock splits, dividends,

recapitalizations and the like after the filing date hereof), plus (y) any accrued dividends on one (1) share of Series C Preferred Stock; and (ii) the net cash proceeds to the Company (after underwriting discounts, commissions and fees) are at least \$30,000,000 (a "*Qualified IPO*"). Upon such automatic conversion of the Series C Preferred Stock, any accrued and any declared and unpaid dividends shall be paid in accordance with the provisions of Section B.1(d) and Section B.5(d). Each share of Series B Preferred Stock shall automatically be converted into shares of Common Stock, based on the then-effective Series B Preferred Conversion Price, (A) at any time upon the affirmative election of the holders of at least a majority of the outstanding shares of the Series B Preferred Stock, voting as a separate class, or (B) immediately upon a closing of a Qualified IPO. Upon such automatic conversion of the Series B Preferred Stock, any accrued and any declared and unpaid dividends shall be paid in accordance with the provisions of Section B.1(d) and Section B.5(d). Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock, based on the then-effective Series A Preferred Conversion Price, (A) at any time upon the affirmative election of the holders of at least a majority of the outstanding shares of the Series A Preferred Stock, voting as a separate class, or (B) immediately upon a closing of a Qualified IPO. Upon such automatic conversion of the Series A Preferred Stock, any accrued and any declared and unpaid dividends shall be paid in accordance with the provisions of Section B.1(d) and Section B.5(d).

(ii) Upon the occurrence of any of the events specified in Section B.5(l)(i) above, the outstanding shares of each applicable series of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; *provided, however*, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of a series of Preferred Stock, the holders of such series of Preferred Stock shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Preferred Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of such series of Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred, and any accrued and declared and unpaid dividends shall be paid in accordance with the provisions of Section B.1(d) and Section B.5(d).

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

market value of one share of Common Stock (as determined by the Board) on the date of conversion.

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

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

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

(q) **Special Mandatory Conversion**

(i) In the event that any holder of shares of Preferred Stock does not participate in a Qualified Financing (as defined below) by purchasing in the aggregate, in such Qualified Financing and within the time period specified by the Corporation (provided that the Corporation has given such holder at least ten (10) days written notice of the Qualified Financing), such holder's Pro Rata Amount (as defined below), then each share of Preferred Stock held by such holder shall automatically, and without any further action on the part of such holder, be converted into shares of Common Stock at the applicable rate of conversion specified in this Section B.5 then in effect immediately prior to the consummation of such Qualified Financing, effective upon, subject to, and concurrently with, the consummation of the Qualified Financing. For purposes of determining the number of shares of Preferred Stock owned by a holder, and for determining the number of Offered Securities a holder of Preferred Stock has purchased in a Qualified Financing, all shares of Preferred Stock held by Affiliates of such holder shall be aggregated with such holder's shares and all Offered Securities purchased by Affiliates of such holder shall be aggregated with the Offered Securities purchased by such holder (provided that no shares or securities shall be attributed to more than one entity or person within any such group of affiliated entities or persons). Upon such conversion (a "*Special Mandatory*

Conversion”), any shares of Preferred Stock so converted shall be cancelled and not subject to reissuance.

(ii) Upon a Special Mandatory Conversion, each holder of shares of Preferred Stock converted pursuant to Section B.5(q)(i) shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section B.5(q). All rights with respect to the Preferred Stock converted pursuant to Section B.5(q)(i), including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. For the sake of clarity, all accrued but unpaid dividends on such converted Preferred Stock shall be cancelled. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. As soon as practicable after the Special Mandatory Conversion and the surrender of the certificate or certificates for Preferred Stock so converted, the Corporation shall cause to be issued and delivered to such holder, or on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Section B.5(m) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(iii) All certificates evidencing shares of Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the time of the Special Mandatory Conversion, be deemed to have been retired and cancelled, and the shares of Preferred Stock converted pursuant to Section B.5(q)(i) represented thereby shall, from and after the time of the Special Mandatory Conversion, be deemed to have been converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. The Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

(iv) For purposes of this Section B.5(q), the following definitions shall apply:

(A) “*Affiliate*” shall mean, with respect to any holder of shares of Preferred Stock, any person, entity or firm which, directly or indirectly, controls, is controlled by or is under common control with such holder, including, without limitation, any entity of which the holder is a partner or member, any partner, officer, director, member or employee of such holder and any venture capital fund now or hereafter existing of which the holder is a partner or member which is controlled by or under common control with one or more general partners of such holder or shares the same management company with such holder.

(B) “*Offered Securities*” shall mean the equity securities of the Corporation set aside by the Board for purchase by holders of outstanding shares of Preferred Stock in connection with a Qualified Financing, and offered to such holders.

(C) “*Pro Rata Amount*” shall mean, with respect to any holder of Preferred Stock, the lesser of (a) a number of Offered Securities calculated by multiplying the aggregate number of Offered Securities by a fraction, the numerator of which is equal to the number of shares of Common Stock held by such holder, including shares of Common Stock issued or issuable upon conversion of all options, warrants and rights and Convertible Securities (other than convertible promissory notes) held by such holder, and the denominator of which is equal to the aggregate number of outstanding shares of Common Stock, including (x) Common Stock issued or issuable upon conversion of all options, warrants and rights and Convertible Securities (other than convertible promissory notes), plus (y) the shares of Common Stock reserved for issuance under the Option Plans and not included in Section 5.B(q)(iv)(C)(x) above, or (b) the maximum number of Offered Securities that such holder is permitted by the Corporation to purchase in such Qualified Financing, after giving effect to any cutbacks or limitations established by the Board and applied on a pro rata basis to all holders of Preferred Stock.

(D) “*Qualified Financing*” shall mean any transaction involving the issuance or sale of equity securities of the Corporation primarily for equity financing or debt financing purposes (as determined by the Board in good faith) after the Original Series C Issue Date which would result in the reduction of the Series C Preferred Conversion Price pursuant to Section B.5(h) above, unless the holders of (x) at least a majority of the Series A Preferred Stock then outstanding, voting as a separate class, (y) at least a majority of the Series B Preferred Stock then outstanding, voting as separate classes and (z) at least 55% of the Series C Preferred Stock then outstanding, voting as a separate class, elect otherwise by written notice given to the Corporation at least five (5) days prior to the consummation of the Qualified Financing.

6. REDEMPTION.

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

(i) The holders of at least 55% of the then outstanding shares of Series C Preferred Stock, voting together as a separate class, may require the Company, to the extent it may lawfully do so, to redeem all of the then outstanding Series C Preferred Stock in one installment beginning not prior to the fifth anniversary of the Original Series C Issue Date (“*Series C Redemption Date*”); *provided* in the case of an Event of Default that is continuing for ninety (90) days, holders of 55% of the Series C Preferred Stock then outstanding, acting as a single class, shall have the right to require the Company to redeem all of the then-outstanding Series C Preferred Stock prior to the fifth anniversary of the Original Series C Issue Date; *provided further* that the Company shall receive at least sixty (60) days prior to such Series C Redemption Date written notice of such election of the Series C Preferred Stock. The Company shall effect such redemptions on the Series C Redemption Date by paying in cash in exchange for the shares of Series C Preferred Stock to be redeemed on the Series C Redemption Date a sum equal to greater of (x) the Original Series C Issue Price per share and (y) the fair market value of the Series C Preferred Stock as of the Series C Redemption Date, as determined by an independent, qualified, third-party appraiser mutually acceptable to the holders of a majority of

the outstanding Series C Preferred Stock and the Company). The total amount to be paid for the Series C Preferred Stock is hereinafter referred to as the "***Series C Redemption Price.***"

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

(iii) On or prior to the Series C Redemption Date, the Company shall deposit the Series C Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after such Series C Redemption Date, the Series C Redemption Price of the shares to their respective holders upon the surrender of their share certificates. Any moneys deposited by the Company pursuant to this Section B.6(a)(iii) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section B.5 hereof no later than the fifth (5th) day preceding the applicable Series C Redemption Date shall be returned to the Company forthwith upon such conversion. The balance of any funds deposited by the Company pursuant to this Section B.6(a)(iii) remaining unclaimed at the expiration of one (1) year following such Series C Redemption Date shall be returned to the Company promptly upon its written request.

(b) The Company shall be obligated to redeem the Series B Preferred Stock as follows:

(i) At any time following the fifth anniversary of the Original Series C Issue Date and at which time there are no shares of Series C Preferred Stock outstanding, the holders of at least a majority of the then outstanding shares of Series B Preferred Stock, voting together as a separate class, may require the Company, to the extent it may lawfully do so, to redeem all of the then outstanding Series B Preferred Stock in one installment ("***Series B Redemption Date***"); *provided* that the Company shall receive at least sixty (60) days prior to such Series B Redemption Date written notice of such election of the Series B Preferred Stock. The Company shall effect such redemptions on the Series B Redemption Date by paying in cash in exchange for the shares of Series B Preferred Stock to be redeemed on the Series B Redemption Date a sum equal to greater of (x) the Original Series B Issue Price per share and (y) the fair market value of the Series B Preferred Stock as of the Series B Redemption Date, as determined by an independent, qualified, third-party appraiser mutually acceptable to the holders of a majority of the outstanding Series B Preferred Stock and the Company). The total amount to be paid for the Series B Preferred Stock is hereinafter referred to as the "***Series B Redemption Price.***"

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

(iii) On or prior to the Series B Redemption Date, the Company shall deposit the Series B Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after such Series B Redemption Date, the Series B Redemption Price of the shares to their respective holders upon the surrender of their share certificates. Any moneys deposited by the Company pursuant to this Section B.6(b)(iii) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section B.5 hereof no later than the fifth (5th) day preceding the applicable Series B Redemption Date shall be returned to the Company forthwith upon such conversion. The balance of any funds deposited by the Company pursuant to this Section B.6(b)(iii) remaining unclaimed at the expiration of one (1) year following such Series B Redemption Date shall be returned to the Company promptly upon its written request.

(c) The Company shall be obligated to redeem the Series A Preferred Stock as follows:

(i) At any time following the fifth anniversary of the Original Series C Issue Date and at which time there are no shares of Series C Preferred Stock or Series B Preferred Stock outstanding, the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, voting together as a separate class, may require the Company, to the extent it may lawfully do so, to redeem all of the then outstanding Series A Preferred Stock in one installment ("*Series A Redemption Date*"); *provided* that the Company shall receive at least sixty (60) days prior to such Series A Redemption Date written notice of such election of the Series A Preferred Stock. The Company shall effect such redemptions on the Series A Redemption Date by paying in cash in exchange for the shares of Series A Preferred Stock to be redeemed on the Series A Redemption Date a sum equal to greater of (x) the Original Series A Issue Price per share and (y) the fair market value of the Series A Preferred Stock as of the Series A Redemption Date, as determined by an independent, qualified, third-party appraiser mutually acceptable to the holders of a majority of the outstanding Series A Preferred Stock and the Company). The total amount to be paid for the Series A Preferred Stock is hereinafter referred to as the "*Series A Redemption Price*."

(ii) At least thirty (30) days but no more than sixty (60) days prior to the Series A Redemption Date, the Company shall send a notice (a "*Series A Redemption Notice*") to all holders of Series A Preferred Stock to be redeemed setting forth (A)

the Series A Redemption Price for the shares to be redeemed; and (B) the place at which such holders may obtain payment of the Series A Redemption Price upon surrender of their share certificates. If the Company does not have sufficient funds legally available to redeem all shares to be redeemed at the Series A Redemption Date (including, if applicable, those to be redeemed at the option of the Company), then it shall so notify such holders and shall redeem such shares pro rata (based on the portion of the aggregate Series A Redemption Price payable to them) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(iii) On or prior to the Series A Redemption Date, the Company shall deposit the Series A Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after such Series A Redemption Date, the Series A Redemption Price of the shares to their respective holders upon the surrender of their share certificates. Any moneys deposited by the Company pursuant to this Section B.6(c)(iii) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section B.5 hereof no later than the fifth (5th) day preceding the applicable Series A Redemption Date shall be returned to the Company forthwith upon such conversion. The balance of any funds deposited by the Company pursuant to this Section B.6(c)(iii) remaining unclaimed at the expiration of one (1) year following such Series A Redemption Date shall be returned to the Company promptly upon its written request.

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

(e) In the event of a call for redemption of any shares of Preferred Stock, the Conversion Rights (as defined in Section B.5) for such Preferred Stock shall terminate as to the shares designated for redemption at the close of business on the fifth (5th) day preceding the applicable redemption date, unless default is made in payment of the applicable redemption price.

7. NO REISSUANCE OF SERIES PREFERRED.

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

FIFTH: At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director.

SIXTH:

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

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

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

E. In the event that a member of the Board who is also a partner or employee of an entity that is a holder of Preferred Stock and that is in the business of investing and reinvesting in other entities, or an employee of an entity that manages such an entity (each, a "*Fund*") acquires knowledge of a potential transaction or other matter in such individual's capacity as a partner or employee of the Fund or the manager or general partner of the Fund (and other than directly in connection with such individual's service as a member of the Board) and that may be an opportunity of interest for both the Company and such Fund (a "*Corporate Opportunity*"), then the Company (i) renounces any expectancy that such director or Fund offer an opportunity to participate in such Corporate Opportunity to the Company and (ii) to the fullest extent permitted by law, waives any claim that such opportunity constituted a Corporate Opportunity that should have been presented by such director or Fund to the Company or any of its affiliates; provided, however, that such director acts in good faith.

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

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

G. The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Company. The stockholders shall also have the power to adopt, amend or repeal

the Bylaws of the Company: provided however, that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by this Third Amended and Restated Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the Company.

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

* * * *

THREE: This Third Amended and Restated Certificate of Incorporation has been duly approved by the Board.

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

IN WITNESS WHEREOF, ARPU, INC. has caused this Third Amended and Restated Certificate of Incorporation to be signed by its President on and as of December 17, 2007.

ARPU, INC.

By: /s/ Edward Brody
Printed Name: Edward Brody
Title: President