

**SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF BEBO, INC.**

The undersigned, Michael Birch, hereby certifies that:

ONE: He is the duly elected and acting Chief Executive Officer of Bebo, Inc., a corporation organized and existing under the laws of the State of Delaware (the "**Corporation**").

TWO: The original certificate of incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on April 17, 2006. The Corporation filed an amended and restated certificate of incorporation with the Secretary of State of the State of Delaware on May 16, 2006 (the "**Amended and Restated Certificate**").

THREE: This Second Amended and Restated Certificate of Incorporation (this "**Certificate of Incorporation**") amends and restates the Amended and Restated Certificate and all amendments to the Amended and Restated Certificate reflected herein have been duly authorized and adopted by the Corporation's Board of Directors and stockholders in accordance with the provisions of Sections 228, 242 and 245 of the Delaware General Corporation Law. The text of the Amended and Restated Certificate is hereby amended and restated in its entirety to read as follows:

**ARTICLE I**

The name of the Corporation is Bebo, Inc.

**ARTICLE II**

The address of the registered office of the Corporation in the State of Delaware is 3500 South Dupont Highway in the City of Dover, County of Kent. The name of its registered agent at such address is Incorporating Services, Ltd.

**ARTICLE III**

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

**ARTICLE IV**

A. **Classes of Stock.** The Corporation is authorized to issue two classes of stock to be designated "**Common Stock**" and "**Preferred Stock.**" The total number of shares of Common Stock that the Corporation is authorized to issue is twenty-eight million four hundred thousand (28,400,000) shares, \$0.001 par value. The total number of shares of Preferred Stock that the Corporation is authorized to issue is ten million three hundred ninety-eight thousand seven hundred ninety (10,398,790) shares, \$0.001 par value.

The Preferred Stock will be issued in series. The first series of Preferred Stock shall be comprised of three million five hundred ninety-eight thousand seven hundred ninety (3,598,790) shares and shall be designated "**Series A-1 Preferred Stock**." As used herein, the term "**Series A-1 Preferred Stock**" without designation shall refer to shares of the Corporation's Series A-1 Preferred Stock. The second series of Preferred Stock shall be comprised of three million four hundred thousand (3,400,000) shares and shall be designated "**Series A-2 Preferred Stock**." As used herein, the term "**Series A-2 Preferred Stock**" without designation shall refer to shares of the Corporation's Series A-2 Preferred Stock. The third series of Preferred Stock shall be comprised of three million four hundred thousand (3,400,000) shares and shall be designated "**Series A-3 Preferred Stock**." As used herein, the term "**Series A-3 Preferred Stock**" without designation shall refer to shares of the Corporation's Series A-3 Preferred Stock.

Subject to compliance with applicable voting rights which may have been or may be granted hereunder to the holders of Preferred Stock or series thereof, including, without limitation, Article IV(B), Section 6 hereof (the "**Protective Provisions**"), the Preferred Stock authorized by this Certificate of Incorporation may be issued from time to time in one or more series. Subject to compliance with the applicable Protective Provisions, the Board of Directors is expressly authorized to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series prior to or subsequent to the issue of shares in that series. In case the number of shares of any such series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

**B. Rights, Preferences, Privileges and Restrictions of Preferred.** The relative rights, preferences, privileges and restrictions granted to or imposed upon the Preferred Stock are as follows:

1. **Dividends.** The holders of the then outstanding Preferred Stock shall be entitled to receive dividends out of any assets legally available therefor, prior and in preference to any declaration or payments of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this Corporation) on the Common Stock of this Corporation, at the rate of \$0.3608 per share per annum for the Series A-1 Preferred Stock (as adjusted for any consolidations, combinations, stock distributions, stock dividends, stock splits or similar events, each a "**Recapitalization Event**") and \$0.3616 per share per annum for the Series A-2 Preferred Stock and Series A-3 Preferred Stock (as adjusted for any Recapitalization Event), payable when, as, and if declared by the Board of Directors; provided, however that no stockholder of the Corporation shall be entitled to receive any dividends as a result of (a) the Corporation's repurchase of certain shares of Series A-1 Preferred Stock (as adjusted for any Recapitalization Event) at a price per share not to exceed \$4.51 (as adjusted for any Recapitalization Event) effected pursuant to the terms and conditions of agreements between the Corporation and each of certain stockholders of the Corporation dated on or about the date on which the Series A-2 Preferred Stock was first issued by the Corporation (the "**Prior Exempt Recapitalization Event**"), or (b) the exchange of shares of Series A-2 Preferred Stock for shares of Series A-3 Preferred Stock to be effected (if elected by the holders of the then outstanding shares of Series A-2 Preferred Stock) between the date of the filing of this Certificate of Incorporation and the closing of a Corporate Sale (as defined Article IV(B), Section 2(c)) to be

consummated in accordance with the terms of the Merger Agreement (as defined in Article IV(B), Section 5(a)) (the "**Planned Exempt Recapitalization Event**"). No dividend may be declared or paid on any shares of Common Stock unless at the same time an equivalent dividend is declared and paid simultaneously on the Preferred Stock on an as-converted basis. The right to dividends on shares of the Common Stock and Preferred Stock shall not be cumulative, and no right shall accrue to holders of Common Stock or Preferred Stock by reason of the fact that dividends on said shares are not declared in any period nor shall any undeclared or unpaid dividend bear or accrue interest.

**2. Liquidation Preference.** In the event of the liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, distributions to the stockholders of the Corporation shall be made in the following manner:

(a) **Preference.** The holders of Series A-2 Preferred Stock and Series A-3 Preferred Stock shall be entitled to receive, on a pari passu basis, prior and in preference to any distribution of any assets or property of the Corporation to the holders of Series A-1 Preferred Stock and Common Stock by reason of their ownership hereof, an amount per share equal to the Original Series A-2 Price or the Original Series A-3 Price, as applicable (as defined in Article IV(B), Section 5(a) below) (as adjusted for any Recapitalization Event) plus an amount equal to all declared and unpaid dividends with respect thereto; provided, however that no stockholder of the Corporation shall be entitled to receive any dividends as a result of the Prior Exempt Recapitalization Event or the Planned Exempt Recapitalization Event. If upon the occurrence of such event, the assets and funds available for distribution are insufficient to permit the payment to the holders of Series A-2 Preferred Stock and Series A-3 Preferred Stock of their full preferential amount, then the entire assets and funds of the Corporation legally available for distribution to stockholders will be distributed among the holders of the Series A-2 Preferred Stock and Series A-3 Preferred Stock ratably in proportion to the full preferential amount which they would be entitled to receive pursuant to the preceding sentence of this Article IV(B), Section 2(a). After payment has been made in full to the holders of Series A-2 Preferred Stock and Series A-3 Preferred Stock pursuant to the first sentence of this Article IV(B), Section 2(a), the holders of Series A-1 Preferred Stock shall be entitled to receive prior and in preference to any distribution of any assets or property of the Corporation to the holders of Common Stock by reason of their ownership hereof, an amount per share equal to the Original Series A-1 Price (as defined in Article IV(B), Section 5(a) below) (as adjusted for any Recapitalization Event) plus an amount equal to all declared and unpaid dividends with respect thereto; provided, however that no stockholder of the Corporation shall be entitled to receive any dividends as a result of the Prior Exempt Recapitalization Event or the Planned Exempt Recapitalization Event. If upon the occurrence of such event, the assets and funds available for distribution are insufficient to permit the payment to the holders of Series A-1 Preferred Stock of their full preferential amount, then the entire assets and funds of the Corporation legally available for distribution to stockholders, after the payment to the holders of Series A-2 Preferred Stock and Series A-3 Preferred Stock of their full preferential amount, will be distributed among the holders of the Series A-1 Preferred Stock ratably in proportion to the full preferential amount which they would be entitled to receive pursuant to the preceding sentence of this Article IV(B), Section 2(a).

(b) **Remaining Assets.** After payment has been made in full to the holders of Preferred Stock pursuant to Article IV(B), Section 2(a), the holders of Common Stock

shall be entitled to receive the remaining funds and assets of the Corporation available for distribution to stockholders ratably in proportion to the shares of Common Stock then held by them; provided, however that no stockholder of the Corporation shall be entitled to receive any dividends as a result of the Prior Exempt Recapitalization Event or the Planned Exempt Recapitalization Event.

(c) **Reorganization or Merger.** The following events shall be considered a liquidation, dissolution or winding up of this Corporation within the meaning of this Article IV(B), Section 2 (each a "**Corporate Sale**"): (i) a reorganization, merger or consolidation of the Corporation with or into any other corporation or corporations, in which the stockholders of the Corporation immediately prior to the transaction hold 50% or less of the voting stock immediately after the transaction, (ii) a sale, transfer, exclusive license, lease or other disposition (but not including a transfer by pledge or mortgage to a bona fide lender) of all or substantially all of the assets of the Corporation (other than to a wholly-owned subsidiary) or (iii) any transaction or series of related transactions to which the Corporation is a party in which the stockholders of the Corporation immediately prior to the transaction hold 50% or less of the voting stock immediately after the transaction; provided, however, that a transaction shall not constitute a Corporate Sale if its sole purpose is to change the state of this Corporation's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held this Corporation's securities immediately prior to such transaction.

(d) **Non-Cash Distributions.** The value of assets or securities distributed pursuant to this Article IV(B), Section 2 shall be computed at their fair market value at the time distributed to stockholders, as determined by the Board of Directors in the good faith exercise of its reasonable business judgment, provided that (i) if such securities are listed on any established stock exchange or a national market system, their fair market value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the thirty (30) day period (or portion thereof) ending three (3) days prior to the closing, as reported in the Wall Street Journal or similar publication, (ii) if such securities are regularly quoted by a recognized securities dealer but selling prices are not reported, their fair market value shall be the average high bid and low asked prices for such securities over the thirty (30) day period (or portion thereof) ending three (3) days prior to the closing; and (iii) if such assets or securities are not publicly traded, their fair market value shall be as determined in good faith by the Board of Directors of the Corporation.

(e) **Consent for Certain Repurchases.** Each holder of an outstanding share of Preferred Stock shall be deemed to have consented, for purposes of Sections 502 and 503 of the General Corporation Law of California (the "**CGCL**"), to distributions made by the Corporation in connection with (i) the Prior Exempt Recapitalization Event, (ii) the Planned Exempt Recapitalization Event, and (ii) the repurchase of shares of Common Stock issued to or held by directors, employees or consultants (1) upon termination of their employment or services pursuant to agreements providing for the right of said repurchase at cost or (2) in connection with the exercise by the Corporation of contractual rights of first refusal or first offer pursuant to agreements providing for the right of said repurchase between the Corporation and such persons, provided the terms of such repurchase shall have been approved by the Board of Directors.

### 3. Voting Rights.

(a) **General Rights.** The holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock could be converted on the record date for the vote or written consent of stockholders and, except as otherwise required by law or as set forth herein, shall have voting rights and powers equal to the voting rights and powers of the Common Stock. The holder of each share of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation and shall vote with holders of the Common Stock at any annual or special meeting of stockholders of the Corporation, or by written consent, upon the election of directors and upon any other matter submitted to a vote of stockholders, except as otherwise provided herein or those matters required by law to be submitted to a class vote. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares of Common Stock into which shares of Preferred Stock held by each holder could be converted) shall be rounded up to the nearest whole number. Each holder of Common Stock shall be entitled to one (1) vote for each share of Common Stock held.

(b) **Election of Board of Directors.** As long as at least an aggregate of 1,677,876 shares of Series A-2 Preferred Stock and Series A-3 Preferred Stock (as adjusted for any Recapitalization Event) are outstanding, the holders of such shares of Series A-2 Preferred Stock and Series A-3 Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect one (1) director of this Corporation at each meeting or pursuant to each consent of the Corporation'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 director. The holders of outstanding Common Stock, voting as a separate class, shall be entitled to elect three (3) directors of this Corporation at each meeting or pursuant to each consent of the Corporation'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. The holders of Preferred Stock and Common Stock, voting together as a single class on an as-converted basis, shall be entitled to elect any remaining members of the Board of Directors at each meeting or pursuant to each consent of the Corporation'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.

(c) **Vacancy.** In the case of any vacancy in the office of a director occurring among the directors elected by the holders of the Series A-2 Preferred Stock and Series A-3 Preferred Stock voting together as a single class, the Common Stock voting as a separate class, or the Common Stock and Preferred Stock voting together as a single class, in each case pursuant to Article IV(B), Section 3(b) hereof, the holders of the shares of that respective class or series may elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of the Series A-2 Preferred Stock and Series A-3 Preferred Stock voting together as a separate class, the Common Stock voting as a single class, or the Common Stock and Preferred Stock voting together as a single class, or any director so elected as provided in the preceding sentence hereof, may be removed during the aforesaid term of office, whether with or without cause, only by the affirmative vote of the holders of the Series A-2 Preferred Stock and Series A-

3 Preferred Stock voting together as a separate class, the Common Stock voting as a separate class, or the Common Stock and Preferred Stock voting together as a single class, respectively, subject to Sections 302, 303, and 304 of the CGCL.

4. **Redemption.** The Preferred Stock is not redeemable.

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

(a) **Right to Convert.** Each share of Preferred Stock shall be convertible without the payment of any additional consideration by the holder thereof and, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent of the Corporation for the Preferred Stock. Each share of Series A-1 Preferred Stock shall be convertible at the conversion rate determined by dividing the Original Series A-1 Price by the Series A-1 Conversion Price (determined as provided herein) in effect at the time of conversion. The "**Original Series A-1 Price**" shall be \$4.51 and the initial "**Series A-1 Conversion Price**" shall be \$4.51. Each share of Series A-2 Preferred Stock shall be convertible at the conversion rate determined by dividing the Original Series A-2 Price by the Series A-2 Conversion Price (determined as provided herein) in effect at the time of conversion. The "**Original Series A-2 Price**" shall be \$4.52 and the initial "**Series A-2 Conversion Price**" shall be \$4.52. Each share of Series A-3 Preferred Stock shall be convertible at the conversion rate determined by dividing the Original Series A-3 Price by the Series A-3 Conversion Price (determined as provided herein) in effect at the time of conversion. The "**Original Series A-3 Price**" shall be \$4.52 and the initial "**Series A-3 Conversion Price**" shall be \$4.52; provided that if, and only if, the automatic conversion set forth in the first sentence of Article IV(B), Section 5(b) below is effected in connection with the closing of a Corporate Sale pursuant to the terms of that certain Agreement and Plan of Merger dated March 12, 2008 (as the same may be amended or modified from time to time, the "**Merger Agreement**"), to which the Corporation is a party, then the Series A-3 Conversion Price applicable to such conversion shall be \$4.19382080374508. Each of the Original Series A-1 Price, Original Series A-2 Price and Original Series A-3 Price is herein referred to as the "**Original Price**." Each of the Series A-1 Conversion Price, Series A-2 Conversion Price and Series A-3 Conversion Price is herein referred to as a "**Conversion Price**". The number of shares of Common Stock into which each share of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock respectively, may be converted is hereinafter referred to as the "**Preferred Stock Conversion Rate**" of the Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock respectively. Each Conversion Price shall be subject to adjustment as set forth in Article III, Section 5(c) below.

(b) **Automatic Conversion.** Each share of Series A-3 Preferred Stock shall automatically be converted into such number of fully paid and nonassessable shares of Common Stock at its then effective Preferred Stock Conversion Rate immediately prior to the closing of a Corporate Sale pursuant to the terms of the Merger Agreement. In addition, each share of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock shall automatically be converted into such number of fully paid and nonassessable shares of Common Stock at the then effective Preferred Stock Conversion Rate, as applicable, immediately upon the earlier of:

(i) the written consent of the holders of more than fifty percent (50%) of the then outstanding shares of Preferred Stock, voting together as a single class on an as-converted-basis; or

(ii) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, (the "*Securities Act*") covering the offer and sale of Common Stock (other than a registration on Form S-8, Form S-4 or comparable or successor forms), at a public offering price per share (prior to underwriters' commissions and expenses) of not less than five (5) times the Original Series A-2 Price (as adjusted for Recapitalization Events) with aggregate gross proceeds to the Corporation of not less than \$30,000,000 (a "*Qualified Public Offering*").

(c) **Adjustments to Conversion Price.**

(i) **Special Definitions.** For purposes of this Article IV(B), Section 5(c), the following definitions shall apply:

(A) "*Options*" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities (as defined below).

(B) "*Convertible Securities*" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(C) "*Additional Shares of Common Stock*" shall mean all shares of Common Stock issued (or, pursuant to Article IV(B), Section 5(c)(iii) below, deemed to be issued) by the Corporation after the effective date of this Certificate of Incorporation other than shares of Common Stock issued or issuable:

(1) to officers, directors or employees of, or consultants to, the Corporation pursuant to a warrant, stock grant, option agreement or plan, purchase plan or other employee stock incentive program or agreement approved by the Board of Directors;

(2) to commercial lenders or lessors, in connection with any loan or lease financing transaction approved by the Board of Directors;

(3) pursuant to a Qualified Public Offering;

(4) in connection with any bona fide strategic acquisitions or partnering transactions approved by the Board of Directors;

(5) in connection with any exercise, conversion or exchange described in Article IV(B), Section 5(c)(iii);

(6) in connection with a transaction described in Article IV(B), Section 5(c)(vii); or

(7) by way of dividend or other distribution on shares of Preferred Stock.

**(D) “Additional Shares of Incentive Stock”** shall mean all shares of Common Stock issued (or, pursuant to Article IV(B), Section 5(c)(iii) below, deemed to be issued) by the Corporation after the effective date of this Certificate of Incorporation, which issuance or deemed issuance is not approved of by the holders of a majority of the outstanding shares of Series A-2 Preferred Stock and Series A-3 Preferred Stock, voting together as a single class on an as-converted basis, to officers, directors or employees of, or consultants to, the Corporation pursuant to a warrant, stock grant, option agreement or plan, purchase plan or other employee stock incentive program or agreement approved by the Board of Directors, exceeding two million eight hundred fifty-eight thousand (2,858,000) shares (as adjusted for any Recapitalization Event).

**(ii) No Adjustment of Conversion Price.** No adjustment in the Series A-2 Conversion Price or the Series A-3 Conversion Price, respectively, shall be made with respect to the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Series A-2 Conversion Price or the Series A-3 Conversion Price, respectively, in effect on the date of, and immediately prior to, such issue.

**(iii) Deemed Issue of Additional Shares of Common Stock or Additional Shares of Incentive Stock.** In the event the Corporation at any time or from time to time after the effective date of this Certificate of Incorporation shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of the Convertible Securities, shall be deemed to be Additional Shares of Common Stock or Additional Shares of Incentive Stock, as applicable, issued as of the time of the issuance of such Option or Convertible Security or, in case such a record date shall have been fixed, as of the close of business on such record date:

**(A)** except as provided in Article IV(B), Section 5(c)(iii)(B) and 5(c)(iii)(C) below, no further adjustment in any Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

**(B)** if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation, or change in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof (other than under or by reason of provisions designed to protect against dilution), a Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect



such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) upon the expiration of any such Options or Convertible Securities, each Conversion Price, to the extent in any way affected by or computed using such Options or Convertible Securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock actually issued upon the exercise of such Options or Convertible Securities; and

(D) (1) no readjustment pursuant to Article IV(B), Section 5(c)(iii) clauses (B) and (C) above shall have the effect of increasing the Series A-1 Conversion Price to an amount that exceeds the Series A-1 Conversion Price on the original adjustment date, (2) no readjustment pursuant to Article IV(B), Section 5(c)(iii) clauses (B) and (C) above shall have the effect of increasing Series A-2 Conversion Price to an amount which exceeds the lower of (a) the Series A-2 Conversion Price on the original adjustment date or (b) the Series A-2 Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock or Additional Shares of Incentive Stock between the original adjustment date and such readjustment date, and (3) no readjustment pursuant to Article IV(B), Section 5(c)(iii) clauses (B) and (C) above shall have the effect of increasing Series A-3 Conversion Price to an amount which exceeds the lower of (a) the Series A-3 Conversion Price on the original adjustment date or (b) the Series A-3 Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock or Additional Shares of Incentive Stock between the original adjustment date and such readjustment date.

**(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock Below Purchase Price.** In the event this Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Article IV(B), Section 5(c)(iii)), after the effective date of this Certificate of Incorporation, without consideration or for a consideration per share less than the Series A-2 Conversion Price or the Series A-3 Conversion Price in effect on the date of and immediately prior to such issue, then and in each such event the Series A-2 Conversion Price or the Series A-3 Conversion Price, respectively, shall automatically be adjusted as set forth in this Article IV(B), Section 5(c)(iv), unless otherwise provided in this Article IV(B), Section 5(c).

**(A) Adjustment of Series A-2 Conversion Price and Series A-3 Conversion Price.** Whenever the Series A-2 Conversion Price or Series A-3 Conversion Price is adjusted by Article IV(B), Section 5(c)(iv), the new Series A-2 Conversion Price or Series A-3 Conversion Price, respectively, shall be determined by multiplying the applicable Series A-2 Conversion Price or Series A-3 Conversion Price then in effect by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such applicable Series A-2 Conversion Price or Series A-3 Conversion Price in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For the purposes of this paragraph, the number of outstanding shares of Common Stock shall be deemed to include the

Common Stock issuable on conversion of all outstanding Preferred Stock other than the Additional Shares of Common Stock so issued, upon conversion or exercise of any outstanding Convertible Securities other than the Additional Shares of Common Stock so issued, and upon exercise of all outstanding Options other than the Additional Shares of Common Stock so issued (and assuming conversion of Convertible Securities issuable upon exercise of such Options).

(v) **Adjustment of Conversion Price Upon Issuance of Additional Shares of Incentive Stock.** In the event this Corporation shall issue Additional Shares of Incentive Stock (including Additional Shares of Incentive Stock deemed to be issued pursuant to Article IV(B), Section 5(c)(iii)) after the effective date of this Certificate of Incorporation then and in each such event the Series A-2 Conversion Price and the Series A-3 Conversion Price shall automatically be adjusted to a new Series A-2 Conversion Price and new Series A-3 Conversion Price, such that the applicable Post-Issuance Percentage (as defined below) is equal to the applicable Pre-Issuance Percentage (as defined below), unless otherwise provided in this Article IV(B), Section 5(c). For purposes of this paragraph, (a) the “*Post-Issuance Percentage*” is equal to a fraction, the numerator of which shall be the number of shares of Common Stock issuable upon conversion of all shares of Series A-2 Preferred Stock or Series A-3 Preferred Stock, as applicable, outstanding immediately following the issuance (or deemed issuance) of such Additional Shares of Incentive Stock after giving effect to the adjustments under this paragraph, and the denominator of which shall be the sum of the number of Additional Shares of Incentive Stock so issued (or deemed issued) and the number of outstanding shares of Common Stock immediately following the issuance (or deemed issuance) of such Additional Shares of Incentive Stock after giving effect to the adjustments under this paragraph, (b) the “*Pre-Issuance Percentage*” is equal to a fraction, the numerator of which shall be the number of shares of Common Stock issuable upon conversion of all shares of Series A-2 Preferred Stock or Series A-3 Preferred Stock, as applicable, outstanding immediately prior to, and without giving effect to any adjustment that otherwise would be effected by this paragraph as a result of, such issuance (or deemed issuance) of such Additional Shares of Incentive Stock, and the denominator of which shall be the number of outstanding shares of Common Stock immediately prior to, and without giving effect to any adjustment that otherwise would be effected by this paragraph as a result of, the issuance (or deemed issuance) of such Additional Shares of Incentive Stock, and (c) the number of outstanding shares of Common Stock shall be deemed to include the Common Stock issuable upon conversion of all outstanding Preferred Stock other than the Additional Shares of Incentive Stock so issued, upon conversion or exercise of any outstanding Convertible Securities other than the Additional Shares of Incentive Stock so issued, and upon exercise of all outstanding Options other than the Additional Shares of Incentive Stock so issued (and assuming conversion of Convertible Securities issuable upon exercise of such Options).

(vi) **Determination of Consideration.** For purposes of this Article IV(B), Section 5(c), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock or Additional Shares of Incentive Stock, as applicable, shall be computed as follows:

(A) **Cash and Property:** Such consideration shall:

(1) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof;

(2) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined by Board of Directors in the good faith exercise of its reasonable business judgment; and

(3) in the event Additional Shares of Common Stock or Additional Shares of Incentive Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board.

**(B) Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Shares of Common Stock or Additional Shares of Incentive Stock deemed to have been issued pursuant to Article IV(B), Section 5(c), relating to Options and Convertible Securities, shall be determined by dividing:

(1) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(2) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

**(vii) Other Adjustments to Conversion Price.**

**(A) Subdivisions, Combinations, or Consolidations of Common Stock.** If at any time and from time to time the outstanding shares of Common Stock shall be subdivided, combined or consolidated, by stock split, stock dividend, combination or like event, into a greater or lesser number of shares of Common Stock after the effective date of this Certificate of Incorporation, each Conversion Price in effect immediately prior to such subdivision, combination, consolidation or stock dividend shall, concurrently with the effectiveness of such subdivision, combination or consolidation, be proportionately adjusted.

**(B) Distributions Other Than Cash Dividends Out of Retained Earnings.** In case the Corporation shall declare a cash dividend upon its Common Stock payable otherwise than out of retained earnings or shall distribute to holders of its

Common Stock shares of its capital stock (other than shares of Common Stock and other than as otherwise adjusted in this Article IV(B), Section 5(c)), stock or other securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights (excluding options to purchase and rights to subscribe for Common Stock or other securities of the Corporation convertible into or exchangeable for Common Stock), then, in each such case, provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation which they would have received had their Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Article IV(B), Section 5 with respect to the rights of the holders of the Preferred Stock.

**(C) Adjustment for Common Stock Dividends and Distributions.** If, after the effective date of this Certificate of Incorporation, the Corporation at any time or from time to time makes, or fixes a record date for determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event each Conversion Price that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying each Conversion Price then in effect by a fraction of (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that 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, each Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter each Conversion Price shall be adjusted pursuant to this Article IV(B), Section 5(c)(vii)(C) to reflect the actual payment of such dividend or distribution.

**(D) Reclassifications and Reorganizations.** In the case, at any time after the date hereof, of any capital reorganization (except as provided in Article IV(B), Section 2(d)) or any reclassification of the stock of the Corporation (other than as a result of a stock dividend or subdivision, split-up or combination of shares), each Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the shares of the Preferred Stock shall, after such reorganization or reclassification, be convertible into the kind and number of shares of stock or other securities or property of the Corporation or otherwise to which such holder would have been entitled if immediately prior to such reorganization or reclassification, the holder had converted the holder's shares of the Preferred Stock into Common Stock. The provisions of this Article IV(B), Section 5(c)(vii)(D) shall similarly apply to successive reorganizations, reclassifications, consolidations or Corporate Sales.

**(d) Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of the any Conversion Price pursuant to this Article IV(B), Section 5,

the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based including the consideration received for any Additional Shares of Common Stock or Additional Shares of Incentive Stock issued. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the type and amount, if any, of other property which at the time would be received upon the conversion of the Preferred Stock.

(e) **Mechanics of Conversion.** Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the headquarters of the Corporation or of any transfer agent for the Corporation and shall give written notice to the Corporation at such office that the holder elects to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued (except that no such written notice of election to convert shall be necessary in the event of an automatic conversion pursuant to Article IV(B), Section 5(b) hereof). The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted (except that in the case of an automatic conversion pursuant to Article IV(B), Section 5(b) hereof such conversion shall be deemed to have been made immediately prior to the closing of the offering referred to in Article IV(B), Section 5(b)) and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. Upon the occurrence of either of the events specified in Article IV(B), Section 5(b) above, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation 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 Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates.

(f) **Fractional Shares.**

(i) In the event of the conversion of shares of Preferred Stock in connection with the closing of a Corporate Sale pursuant to the terms of the Merger Agreement, fractional shares of Common Stock may be issued upon such conversion.

(ii) Other than as set forth in Article IV(B), Section 5(f)(i) above, no fractional shares of Common Stock shall be issued upon conversion of shares of

Preferred Stock. In lieu of any fractional shares to which the holder of Preferred Stock would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock as determined by the Board of Directors of the Corporation. The number of whole shares issuable to each holder upon such conversion shall be determined on the basis of the number of shares of Common Stock issuable upon conversion of the total number of shares of Preferred Stock of each holder at the time converting into Common Stock.

(g) **No Dilution or Impairment.** Without the consent of the Preferred Stock in accordance with Article IV(B), Section 6, the Corporation will not amend this Certificate of Incorporation or participate in any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against dilution or other impairment.

(h) **Status of Converted Shares.** No shares of Preferred Stock which have been converted into Common Stock pursuant to Article IV(B), Section 5 hereof, after the original issuance thereof shall ever again be reissued and all such shares so converted shall upon such conversion be appropriately canceled on the books of the Corporation and shall be restored to the status of authorized but unissued Preferred Stock of the Corporation, undesignated as to series.

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

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

6. **Protective Provisions.** In addition to any other rights provided by law, as long as a majority of the authorized shares of the Preferred Stock remain outstanding, this Corporation shall not (whether by merger, amendment, consolidation or otherwise), without first

obtaining the affirmative vote or written consent of the holders of a majority of the outstanding shares of Preferred Stock, voting together as a single class on an as-converted basis:

- (a) change the authorized number of directors on the Corporation's Board of Directors;
- (b) make any amendment or waiver of this Corporation's Certificate of Incorporation or Bylaws that adversely changes the rights, preferences or privileges of the Preferred Stock or any series thereof;
- (c) increase the authorized number of, or issue, any securities (including any security convertible into or exercisable for any equity security) on parity with or senior any series of the Preferred Stock with respect to dividends, voting, conversion, redemption or liquidation preference, including without limitation, the Series A-1 Preferred Stock, Series A-2 Preferred Stock or Series A-3 Preferred Stock;
- (d) consummate or agree to consummate a Corporate Sale; except that no approval of the Preferred Stock shall be necessary if the closing of such transaction results in the distribution of assets to the holders of the Series A-2 Preferred Stock and Series A-3 Preferred Stock (or the Common Stock issuable upon conversion thereof) pursuant to Article IV(B), Section 2 hereof, by reason of such holders' ownership thereof, in an amount per share equal to or greater than nine (9) times the Original Series A-2 Price (as adjusted for Recapitalization Events); and
- (e) enter into any transaction or agreement between the Corporation and Michael Birch, Xochi Birch, the Corporation's executive officers or their affiliates or respective family members (except in the ordinary course of business as part of travel advances pursuant to an expense reimbursement policy approved by the Board of Directors following the effective date of this Certificate of Incorporation).

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

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

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

3. **Voting Rights.** The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law or as set forth in this Certificate of Incorporation.

The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of this Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law.

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

## ARTICLE V

A. **Limitation of Directors' and Officers' Liability.** To the fullest extent permitted by the Delaware General Corporation Law as the same exists or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exception from liability or limitation thereof is not permitted under the Delaware Corporation Law as the same exists or may hereafter be amended. Neither any amendment nor repeal of this Article, nor the adoption of any provisions of this Certificate of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision. To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers, employees and other agents of the Corporation (and any other persons to which Delaware law permits the Corporation to provide indemnification), through Bylaw provisions, agreements with any such director, officer, employee or other agent or other person, vote of stockholders or disinterested directors, or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to limits created by applicable Delaware law (statutory or nonstatutory), with respect to actions for breach of duty to a corporation, its stockholders and others.

B. **Repeal or Modification.** Any repeal or modification of the foregoing provisions of this Article V by the stockholders of the Corporation shall not adversely affect any right or protection of an agent of the Corporation existing at the time of such repeal or modification.

## ARTICLE VI

Except as otherwise provided in this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

## ARTICLE VII

The number of directors of the Corporation shall be fixed from time to time by a bylaw or amendment thereof duly adopted by the Board of Directors or by the stockholders.



## **ARTICLE VIII**

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

## **ARTICLE IX**

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

## **ARTICLE X**

Subject to the Protective Provisions, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

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IN WITNESS WHEREOF, the undersigned has executed this Second Amended and Restated Certificate of Incorporation, on this 14th day of May, 2008 and certifies under penalty of perjury that he has read the foregoing Second Amended and Restated Certificate of Incorporation and knows the contents thereof and that the statements therein are true.

Executed at San Francisco, California.

/s/ Michael Birch

Michael Birch, Chief Executive Officer