

**SIXTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
ACCEPT SOFTWARE CORPORATION**

**(Pursuant to Sections 242 and 245 of the  
General Corporation Law of the State of Delaware)**

The undersigned, Bryan Plug, hereby certifies that:

**FIRST:** He is the duly elected and acting Chief Executive Officer of Accept Software Corporation, a Delaware corporation;

**SECOND:** The original name of this corporation was Accept Software Corporation and it was incorporated on June 20, 2002.

**THIRD:** The Board of Directors duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

**RESOLVED**, that the Certificate of Incorporation of this corporation be amended and restated in its entirety as follows:

**ARTICLE I**

The name of this corporation is Accept Software Corporation (the "Corporation").

**ARTICLE II**

The address of the registered office of the Corporation in the State of Delaware is the located at 3500 South Dupont Highway, in the City of Dover, County of Kent, State of Delaware, 19901. The name of its registered agent at such address is Incorporating Services, Ltd.

**ARTICLE III**

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "General Corporation Law").

**ARTICLE IV**

A. Authorization of Stock. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total

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Secretary of State  
Division of Corporations  
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number of shares that the Corporation is authorized to issue is one hundred thirty-two million, forty thousand, seven hundred sixty-nine (132,040,769). The total number of shares of common stock authorized to be issued is seventy-five million (75,000,000), par value \$0.001 per share (the "Common Stock"). The total number of shares of Preferred Stock authorized to be issued is fifty-seven million, forty thousand, seven hundred sixty-nine (57,040,769), par value \$0.001 per share (the "Preferred Stock"), two hundred fifty-one thousand, five hundred ninety-eight (251,598) of which are designated as Series A1 Preferred Stock (the "Series A1 Preferred Stock"), six hundred eighty-nine thousand, one hundred seventy-one (689,171) of which are designated as Series A2 Preferred Stock (the "Series A2 Preferred Stock"), five million six hundred thousand (5,600,000) of which are designated as Series A3 Preferred Stock (the "Series A3 Preferred Stock"), forty-two million (42,000,000) of which are designated as Series B Preferred Stock (the "Series B Preferred Stock") and eight million, five hundred thousand (8,500,000) of which are designated as Series C Preferred Stock (the "Series C Preferred Stock").

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

1. Dividend Provisions.

(a) The holders of shares of Series C Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities or rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Series A1, Series A2, Series A3 or Series B Preferred Stock, or Common Stock of the Corporation, at the rate of \$0.04697 per annum (pro-rated on an elapsed days basis for periods of less than one year) for each share of outstanding Series C Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like), payable when, as, and if declared by the Board of Directors of the Corporation (the "Board").

(b) Upon payment of the dividends required by subsection (a) of this Section 1, the holders of shares of Series B Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities or rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Series A3, Series A2 or Series A1 Preferred Stock, or Common Stock of the Corporation, at the rate of \$ 0.0328 per annum (pro-rated on an elapsed days basis for periods of less than one year) for each share of outstanding Series B Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like), payable when, as, and if declared by the Board.

(c) Upon payment of the dividends required by subsections (a) and (b) of this Section 1, the holders of shares of Series A3 Preferred Stock shall be entitled to receive

dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities or rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Series A1 or Series A2 Preferred Stock, or Common Stock of the Corporation, at the rate of \$0.10 per annum (pro-rated on an elapsed days basis for periods of less than one year) for each share of outstanding Series A3 Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like), payable when, as, and if declared by the Board.

(d) Upon payment of the dividends required by subsections (a), (b) and (c) of this Section 1, the holders of shares of Series A1 or Series A2 Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities or rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the rate of: (i) \$0.432 per annum (pro-rated on an elapsed days basis for periods of less than one year) for each share of outstanding Series A1 Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like), and (ii) \$0.5024 per annum (pro-rated on an elapsed days basis for periods of less than one year) for each share of outstanding Series A2 Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like), payable when, as, and if declared by the Board.

(e) Such dividends shall not be cumulative. After payment of such dividends, any additional dividends shall be distributed among the holders of Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock then held by each holder (assuming conversion of all such Preferred Stock into Common Stock).

## 2. Liquidation Preference.

(a) In the event of any Liquidation Event (as defined below), either voluntary or involuntary, the holders of the Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of the proceeds of such Liquidation Event (the "Proceeds") to the holders of the Series A1, Series A2, Series A3 or Series B Preferred Stock or Common Stock, by reason of their ownership thereof, an amount per share equal to the sum of two times the applicable Original Issue Price for the Series C Preferred Stock, plus declared but unpaid dividends on such shares. Following payment of this amount to the holders of Series C Preferred Stock, the holders of the Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of the Proceeds to the holders of the Series A1, Series A2 or Series A3 Preferred Stock or Common Stock, by reason of their ownership thereof, an amount per share equal to the sum of two times the applicable Original Issue Price for the Series B Preferred Stock, plus declared but unpaid dividends on such shares. Following payment of this amount to the holders of Series B Preferred Stock, the holders of the Series A3 Preferred Stock shall be entitled to receive, prior and in preference to any distribution of the Proceeds to the holders of the Series A2 or Series A1 Preferred Stock or Common Stock, by reason of their

ownership thereof, an amount per share equal to the sum of two times the applicable Original Issue Price for the Series A3 Preferred Stock, plus declared but unpaid dividends on such shares. Following payment of this amount to the holders of Series A3 Preferred Stock, the holders of the Series A2 Preferred Stock shall be entitled to receive, prior and in preference to any distribution of the Proceeds to the holders of the Series A1 Preferred Stock or Common Stock, by reason of their ownership thereof, an amount per share equal to the sum of the applicable Original Issue Price (as defined below) for the Series A2 Preferred Stock, plus declared but unpaid dividends on such shares. Following payment of this amount to the holders of Series A2 Preferred Stock, the holders of the Series A1 Preferred Stock shall be entitled to receive, prior and in preference to any distribution of the Proceeds to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the sum of the applicable Original Issue Price for the Series A1 Preferred Stock, plus declared but unpaid dividends on such shares. For purposes of this Restated Certificate, "Original Issue Price" shall mean: (i) \$5.40 per share for each share of the Series A1 Preferred Stock then held (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock), (ii) \$6.28 per share for each share of the Series A2 Preferred Stock then held (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock), (iii) \$1.25 per share for each share of the Series A3 Preferred Stock then held (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock), (iv) \$0.41 per share for each share of the Series B Preferred Stock then held (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock), and (v) \$0.5871 per share for each share of the Series C Preferred Stock then held (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock).

(b) Upon the completion of the distribution required by subsection (a) of this Section 2, the remaining Proceeds available for distribution to stockholders shall be distributed among the holders of the Series A3, Series B and Series C Preferred Stock and Common Stock of the Corporation pro rata based on the number of shares of Common Stock held by each (assuming the conversion to Common Stock of the Series A3, Series B and Series C Preferred Stock at the then applicable Conversion Rate).

(c) For purposes of this Section 2, a "Liquidation Event" shall include (A) the closing of the sale, transfer or other disposition of all or substantially all of the Corporation's assets, (B) the consummation of the merger or consolidation of the Corporation with or into another entity (except a merger or consolidation in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold at least 50% of the voting power of the capital stock of the Corporation or the surviving or acquiring entity), (C) the closing of the transfer (whether by merger, consolidation or otherwise), in one transaction or a series of related transactions, to a person or group of affiliated persons (other than an underwriter of the Corporation's securities), of the Corporation's securities if, after such closing, such person or group of affiliated persons would hold 50% or more of the outstanding voting stock of the Corporation (or the surviving or acquiring entity), (D) the grant of an exclusive, irrevocable license of all or substantially all of the Corporation's intellectual property to a third

party or (E) a liquidation, dissolution or winding up of the Corporation; provided, however, that a transaction shall not constitute a Liquidation Event if its sole purpose is to change the state of the Corporation's incorporation, to consolidate with a wholly-owned subsidiary, or to create a holding company that will be owned in substantially the same proportions by the persons who held the Corporation's securities immediately prior to such transaction. Notwithstanding the prior sentence, the sale of shares of Preferred Stock in a financing transaction shall not be deemed a "Liquidation Event." The treatment of any particular transaction or series of related transactions as a Liquidation Event may be waived by the vote or written consent of the holders of a majority of the outstanding Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis).

(i) In any Liquidation Event, if Proceeds received by the Corporation or its stockholders are other than cash, their value will be deemed to be their fair market value. Any securities shall be valued as follows:

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

(1) If traded on a securities exchange, the value shall be based on the formula specified in the definitive agreements for the Liquidation Event, or, if no such formula exists, then the value of such securities shall be based on a formula approved by the Board and deemed to be the average of the closing prices of the securities on such exchange over the twenty (20) trading day period ending three (3) trading days prior to the closing of the Liquidation Event;

(2) If actively traded over-the-counter, the value shall be based on the formula specified in the definitive agreements for the Liquidation Event or, if no such formula exists, then the value of such securities shall be based on a formula approved by the Board and deemed to be the average of the closing bid or sale prices (whichever is applicable) over the twenty (20) trading day period ending three (3) trading days prior to the closing of the Liquidation Event or such other formula as is determined in good faith by the Board; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Board and the holders of at least seventy percent (70%) of the voting power of all then outstanding shares of Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as mutually determined by the Board and the holders of at least seventy percent (70%) of the voting power of all then outstanding shares of such Preferred Stock.

(C) The foregoing methods for valuing non-cash consideration to be distributed in connection with a Liquidation Event may be superseded by any determination of such value set forth in the definitive agreements governing such Liquidation Event.

(ii) In the event the requirements of this Section 2 are not complied with, the Corporation shall forthwith either:

(A) cause the closing of such Liquidation Event to be postponed until such time as the requirements of this Section 2 have been complied with; or

(B) cancel such transaction, in which event the rights, preferences, privileges and restrictions of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences, privileges and restrictions existing immediately prior to the date of the first notice referred to below.

The Corporation shall give each holder of record of Preferred Stock written notice of such impending Liquidation Event not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes, unless such notice requirements are waived. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that subject to compliance with the General Corporation Law such periods may be shortened or waived, either before or after the action for which notice is required, upon the written consent of the holders of Preferred Stock that represent at least seventy percent (70%) of the voting power of all then outstanding shares of such Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis).

3. Redemption. The Preferred Stock is not redeemable.

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

(a) Right to Convert. Subject to Section 4(c), each share of Preferred Stock shall be convertible, 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 for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price for such series by the applicable Conversion Price for such series (the conversion rate for a series of Preferred Stock into Common Stock is referred to herein as the "Conversion Rate" for such series), determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share for each series of Preferred Stock shall be the Original Issue Price applicable to such series; provided, however, that the Conversion Price for the Preferred Stock shall be subject to adjustment as set forth in Section 4(d).

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Rate at the time in effect for such

series of Preferred Stock immediately upon the earlier of (i) the Corporation's sale of its Common Stock in a firm commitment underwritten public offering, pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), where the public offering price is not less than three times the Original Issue Price for the Series C Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to the Series C Preferred Stock) and results in aggregate gross proceeds to the Corporation (before underwriting discounts, commissions and fees) of at least thirty million dollars (\$30,000,000) and the Common Stock of the Corporation is listed for trading on the TSX, NYSE, NASDAQ or other recognized stock exchange acceptable to the holders of at least seventy percent (70%) of the voting power of all the then outstanding shares of Preferred Stock (a "Qualifying IPO") or (ii) the date specified by written consent or written agreement of the holders of at least seventy percent (70%) of the then outstanding shares of Series C Preferred Stock (voting as a separate class).

(c) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to voluntarily convert such Preferred Stock into shares of Common Stock, the holder shall surrender the certificate or certificates therefor, duly endorsed (or a reasonably acceptable affidavit and indemnity undertaking in the case of a lost, stolen or destroyed certificate), at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and a certificate for the remaining number of shares of Preferred Stock if less than all of the Preferred Stock evidenced by the certificate was surrendered. Such conversion shall be deemed to have been made immediately prior to the close of business on: (i) the date of such surrender of the shares of Preferred Stock to be converted or (ii), if applicable, the date of automatic conversion specified in Section 4(b) above, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event any persons entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities. If the conversion is in connection with automatic conversion provisions of Section 4(b)(ii) above, such conversion shall be deemed to have been made on the conversion date described in the stockholder consent approving such conversion, and the persons entitled to receive shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holders of such shares of Common Stock as of such date.

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

(i) If the Corporation should issue, at any time after the date upon which any shares of Series C Preferred Stock were first issued (the "Purchase Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price applicable to the Series C Preferred Stock in effect immediately prior to the issuance of such Additional Stock (for the avoidance of doubt, no Preferred Stock Conversion Price shall be adjusted for events prior to the issuance of such Preferred Stock, as applicable), the Conversion Price for such series in effect immediately prior to each such issuance shall automatically (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying such Conversion Price by a fraction, (x) the numerator of which shall be the number of shares of Common Stock Outstanding (as defined below) immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at the applicable Conversion Price (and the applicable Conversion Price for the Series A1 Preferred Stock and Series A2 Preferred Stock shall be the Series A3 Conversion Price); and (y) the denominator of which shall be the number of shares of Common Stock Outstanding (as defined below) immediately prior to such issuance plus the number of shares of such Additional Stock. For purposes of this Section 4(d)(i), the term "Common Stock Outstanding" shall mean and include the following: (1) outstanding Common Stock, (2) Common Stock issuable upon conversion of outstanding Preferred Stock, (3) Common Stock issuable upon exercise of outstanding stock options and (4) Common Stock issuable upon exercise (and, in the case of warrants to purchase Preferred Stock, conversion) of outstanding warrants. Shares described in (1) through (4) above shall be included whether vested or unvested, whether contingent or non-contingent and whether exercisable or not yet exercisable.

(A) No adjustment of the Conversion Price for the Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward. Notwithstanding any other provision of this Section 4(d)(i), except to the limited extent provided for in Sections 4(d)(i)(D)(2) and 4(d)(i)(D)(3), no adjustment of such Conversion Price pursuant to this Section 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(B) In the case of the issuance of Additional Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.



(C) In the case of the issuance of the Additional Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined by the Board irrespective of any accounting treatment.

(D) In the case of the issuance of securities or rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock (the "Common Stock Equivalents"), the following provisions shall apply for purposes of this Section 4(d)(i):

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

(2) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon conversion, exchange or exercise of any Common Stock Equivalents, other than a change resulting from the antidilution provisions thereof, the Conversion Price of the Preferred Stock, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the conversion, exchange or exercise of such Common Stock Equivalents.

(3) Upon the termination or expiration of the convertibility, exchangeability or exercisability of any Common Stock Equivalents, the Conversion Price of the Preferred Stock, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and Common Stock Equivalents that remain convertible, exchangeable or exercisable) actually issued upon the conversion, exchange or exercise of such Common Stock Equivalents.

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

(ii) For purposes of Section 4(d)(i), “Additional Stock” shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(D)) by the Corporation after an applicable Purchase Date other than:

(A) Common Stock issued pursuant to a transaction described in Section 4(d)(iii) hereof;

(B) Up to 12,193,152 shares of Common Stock issued or issuable to employees, directors, consultants and other service providers for the primary purpose of soliciting or retaining their services pursuant to plans or agreements unanimously approved by the Corporation’s Board;

(C) Common Stock issued pursuant to a Qualifying IPO;

(D) Common Stock issued pursuant to the conversion of shares of Preferred Stock;

(E) Common Stock issued pursuant to the conversion or exercise of convertible or exercisable securities outstanding on the Purchase Date;

(F) Capital stock, or warrants or options to purchase capital stock, issued in connection with a bona fide business acquisition of or by the Corporation, whether by merger, consolidation, sale of assets, sale or exchange of stock or otherwise, the terms of which are approved by the Board;

(G) Common Stock issued or deemed issued pursuant to Section 4(d)(i)(D) as a result of a decrease in the Conversion Price of any series of Preferred Stock resulting from the operation of Section 4(d);

(H) Capital stock that is issued or issuable with the unanimous approval of the Board of Directors of the Corporation, the Board specifically stating that it shall not be Additional Stock;

(I) Common Stock issued upon the conversion of warrants, bridge notes, or other rights outstanding as of the date of as of the first issuance of Series C Preferred Stock, to acquire Common Stock or other shares or other securities convertible into or exchangeable for Common Stock;

(J) Up to 360,000 shares of Common Stock (or shares of Preferred Stock initially convertible into Common Stock) to financial institutions or lessors in connection with commercial credit arrangements, equipment financings, commercial property lease transactions, or similar transactions;

(K) Up to 720,000 shares of Common Stock (or shares of Preferred Stock initially convertible into Common Stock) in strategic partnership transactions entered into for primarily non-equity financing purposes approved by the Board; or

(L) Capital stock issued or issuable to persons or entities with which the Corporation has business relationships, the terms of which issuances to such entity are approved by the Corporation's Board of Directors, including the Senior Preferred Director, and stockholders holding at least 70% of the Corporation's then outstanding Series C Preferred Stock, and provided such issuances are for other than primarily equity financing purposes.

(iii) In the event the Corporation should, at any time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

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

(e) Other Distributions. In the event the Corporation shall declare a distribution (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2 of this Article IV(B)) payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(iii), then, in each such case for the purpose of this Section 4(e), the holders of the Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

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

Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Preferred Stock) shall be applicable after that event in as nearly equivalent a manner as may be practicable.

(g) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of Preferred Stock and the aggregate number of shares of Common Stock to be issued to particular stockholders shall be rounded down to the nearest whole share and the corporation shall pay in cash the fair market value (as determined in good faith by the Board) of any fractional shares, in lieu of issuing any such fractional shares, as of the time when entitlements to receive such fractions are determined.

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

(h) 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, the Corporation shall mail to each holder of Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution, and the amount and character of such dividend or distribution.

(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 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; 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 the Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate.

(j) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock (i) shall be deemed given if delivered personally, sent via internationally recognized overnight courier service, via facsimile or deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation and (ii) may be waived by the holders of at least seventy percent (70%) of the outstanding shares of Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis).

(k) Waiver of Adjustment to Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived, either prospectively or retroactively or in a particular instance, by the consent or vote of the holders of at least seventy percent (70%) of the outstanding shares of Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis). Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

## 5. Voting Rights.

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

(b) Voting for the Election of Directors. As long as any shares of Series C or Series B Preferred Stock are outstanding, the holders of the outstanding shares of Series C and Series B Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect one (1) director of the Corporation at any election of directors (the "Senior Preferred Director" or the "Series B Director"). As long as any shares of Series A1, Series A2 or Series A3 Preferred Stock are outstanding, the holders of the outstanding shares of Series A1, Series A2 and Series A3 Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect one (1) director of the Corporation at any election of directors (the "Series A Director"). The holders of outstanding Common Stock shall be entitled to elect one (1) director of the Corporation at any election of directors, who shall be the Chief Executive Officer of the Corporation (the "Common Director"). The holders of the Common Stock and Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect two (2) directors of the Corporation at any election of directors, provided that such directors shall be designated by the unanimous decision of the Series A Director, the Senior Preferred Director, and the Common Director. Upon the approval by a majority of the then existing directors, the

number of authorized directors of the Corporation may be increased by not more than two (2), at which point such additional director(s) shall be elected in the manner set forth in the preceding sentence. The Chairman shall be selected by the Board.

Notwithstanding the provisions of Section 223(a)(1) and 223(a)(2) of the General Corporation Law, any vacancy, including newly created directorships resulting from any increase in the authorized number of directors or amendment of this Restated Certificate, and vacancies created by removal or resignation of a director, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; provided, however, that where such vacancy occurs among the directors elected by the holders of a class or series of stock, the holders of shares of such class or series may override the Board's action to fill such vacancy by (i) voting for their own designee to fill such vacancy at a meeting of the Corporation's stockholders or (ii) written consent, if the consenting stockholders hold a sufficient number of shares to elect their designee at a meeting of the stockholders. Any director elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of such stockholders.

(c) Protective Provisions.

(i) So long as at least 500,000 shares of Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, reclassification and the like), the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least seventy-five percent (75%) of the then outstanding shares of Preferred Stock, voting together as a single class on an as-converted basis:

(A) alter or change the rights, preferences or privileges of the shares of Series A1, Series A2, Series A3, Series B or Series C Preferred Stock so as to affect adversely the shares of such series, whether by merger or otherwise;

(B) increase or decrease (other than by conversion) the total number of authorized shares of Preferred Stock;

(C) redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at no greater than cost upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal;

(D) authorize or issue, any other equity security, including any security (other than Series C Preferred Stock) convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series C Preferred Stock with respect to voting (other than the pari passu voting rights of Common Stock), dividends, conversion rights or liquidation preferences;

(E) amend, alter or repeal any provision of this Restated Certificate or the Bylaws of the Corporation;

(F) enter into any agreement or arrangement with any party not at arm's length to the Corporation, other than such an agreement or arrangement entered into (i) in the ordinary course of business, (ii) on fair market value terms and (iii) as unanimously approved by directors not involved in such agreement or arrangement (other than a contractual employment obligation between an employee and the Corporation which has been unanimously approved by the Board);

(G) except as set forth in Section 5(b) above, increase or decrease the number of authorized directors on the Board;

(H) engage in any action that results in the payment or declaration of a dividend on the Common Stock (other than a stock dividend on the Common Stock for which an adjustment is made in the conversion of the Preferred Stock shares);

(I) effect a Liquidation Event;

(J) enter into any transaction between the Corporation and its stockholders, officers or directors; or

(K) issue any debt securities or pledge or encumber of any of the Corporation's assets or make any guarantees.

(ii) So long as at least 500,000 shares of Series A1, Series A2, or Series A3 Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, reclassification and the like), the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least sixty percent (60%) of the then outstanding shares of Series A1, Series A2, or Series A3 Preferred Stock, voting together as a single class:

(A) alter or change the rights, preferences or privileges of the shares of Series A1, Series A2, or Series A3 Preferred Stock so as to adversely affect the shares of such series; or

(B) increase or decrease (other than by conversion) the total number of authorized shares of Series A1, Series A2, or Series A3 Preferred Stock.

(iii) So long as at least 500,000 shares of Series B Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, reclassification and the like), the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least seventy percent (70%) of the then outstanding shares of Series B Preferred Stock, voting together as a single class:

(A) alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock so as to affect adversely the shares of such series; or

(B) increase or decrease (other than by conversion) the total number of authorized shares of Series B Preferred Stock.

(iv) So long as at least 500,000 shares of Series C Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, reclassification and the like), the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least seventy percent (70%) of the then outstanding shares of Series C Preferred Stock, voting together as a single class:

(A) alter or change the rights, preferences or privileges of the shares of Series C Preferred Stock so as to affect adversely the shares of such series; or

(B) increase or decrease (other than by conversion) the total number of authorized shares of Series C Preferred Stock.

6. Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. This Restated Certificate of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

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 to dividends, the holders of the Common Stock shall be entitled to receive, when, if and as declared by the Board, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board.

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



3. Redemption. The Common Stock is not redeemable at the option of the holder.

4. 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. Subject to Section 6 of Division B of this Article IV, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

## **ARTICLE V**

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

## **ARTICLE VI**

Except as otherwise provided in this Restated Certificate, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

## **ARTICLE VII**

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

## **ARTICLE VIII**

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation 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 or in the Bylaws of the Corporation.

## **ARTICLE IX**

A director of the Corporation shall, to the fullest extent permitted by the General Corporation Law as it now exists or as it may hereafter be amended, not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is amended after approval by the stockholders of this Article IX to authorize corporate action further eliminating or limiting the personal liability of directors,

then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article IX by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

## ARTICLE X

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

## ARTICLE XI

To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders, and others.

Any amendment, repeal or modification of the foregoing provisions of this Article XI shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

\* \* \*

**FOURTH:** The foregoing amendment and restatement was approved by the holders of the requisite number of shares of this Corporation in accordance with Section 228 of the General Corporation Law.

**FIFTH:** That this Restated Certificate, which restates and integrates and further amends the provisions of the Corporation's Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

*[The remainder of this page is intentionally left blank.]*

**IN WITNESS WHEREOF**, this Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the Corporation on this 7<sup>th</sup> day of December, 2010.

/s/ Bryan Plug

Bryan Plug, Chief Executive Officer