

**FIFTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
AWAREPOINT CORPORATION**

Jason Howe hereby certifies that:

ONE: The name of this corporation is AwarePoint Corporation, the original name of this corporation is AWP Acquisition Corporation and the date on which the Certificate of Incorporation of this corporation was originally filed with the Secretary of State of the State of Delaware was December 5, 2003.

TWO: He is the duly elected and acting Chief Executive Officer of this corporation.

THREE: The Fourth Amended and Restated Certificate of Incorporation of this corporation is hereby amended and restated to read as follows:

I.

The name of this company is AWAREPOINT CORPORATION (the "*Company*" or the "*Corporation*").

II.

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

III.

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

IV.

A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is 182,345,000 shares, 75,000,000 shares of which shall be Common Stock (the "*Common Stock*") and 107,345,000 shares of which shall be Preferred Stock (the "*Preferred Stock*"). The Preferred Stock shall have a par value of \$0.001 per share and the Common Stock shall have a par value of \$0.001 per share.

B. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Company entitled to vote (voting

together as a single class on an as-if-converted basis) irrespective of the provisions of Section 242(b)(2) of the DGCL.

C. 1,881,250 of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "**Series A Preferred**"). 4,504,151 of the authorized shares of Preferred Stock are hereby designated "Series B Preferred Stock" (the "**Series B Preferred**"). 4,504,151 of the authorized shares of Preferred Stock are hereby designated "Series B-1 Preferred Stock" (the "**Series B-1 Preferred**"). 14,220,374 of the authorized shares of Preferred Stock are hereby designated "Series C Preferred Stock" (the "**Series C Preferred**"). 14,220,374 of the authorized Preferred Stock are hereby designated "Series C-1 Preferred Stock" (the "**Series C-1 Preferred**"). 34,007,350 of the authorized shares of Preferred Stock are hereby designated "Series D Preferred Stock" (the "**Series D Preferred**"). 34,007,350 of the authorized shares of Preferred Stock are hereby designated "Series D-1 Preferred Stock" (the "**Series D-1 Preferred**"). The Series A Preferred, Series B Preferred, Series B-1 Preferred, Series C Preferred, Series C-1 Preferred, Series D Preferred and Series D-1 Preferred are collectively referred to herein as the "**Series Preferred**." The Series D Preferred and Series D-1 Preferred are collectively referred to herein as the "**Senior Preferred**." The Series A Preferred, Series B Preferred, Series B-1 Preferred, Series C Preferred and Series C-1 Preferred are collectively referred to herein as the "**Junior Preferred**." The Series B Preferred, Series B-1 Preferred, Series C Preferred and Series C-1 Preferred are collectively referred to herein as the "**Series B and C Preferred**." Shares of Series B-1 Preferred, Series C-1 Preferred and Series D-1 Preferred shall only be issued by the Company upon the conversion of shares of Series B Preferred, Series C Preferred or Series D Preferred, respectively, pursuant to Section (D)(5)(h)(vii) herein.

D. The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows:

1. DIVIDEND RIGHTS.

(a) The holders of Series D Preferred and Series D-1 Preferred, in preference to the holders of Junior Preferred and Common Stock, shall be entitled to receive, when, as and if declared by the Board of Directors of the Company (the "**Board**"), on a pari passu basis among such series, but only out of funds that are legally available therefor, cash dividends at the rate of 6% of the Series D Original Issue Price (as defined below) per annum on each outstanding share of Series D Preferred or Series D-1 Preferred. Such dividends shall be payable only when, as and if declared by the Board and shall be non-cumulative. Any partial payment of dividends will be made among the holders of the Series D Preferred and Series D-1 Preferred in proportion to the payment each such holder is otherwise entitled to receive. In the event that any shares of Series D Preferred convert into shares of Series D-1 Preferred, any accrued dividends on the Series D Preferred through the date of such conversion shall carry forward and continue as accrued dividends on the shares of Series D-1 Preferred.

(b) After payment of dividends to the holders of Series D Preferred and Series D-1 Preferred as set forth in Section 1(a) above, the holders of Junior Preferred, in preference to the holders of Common Stock, shall be entitled to receive, when, as and if declared by the Board, on a pari passu basis among such series, but only out of funds that are legally

available therefor, cash dividends at the rate of (i) 6% of the Series C Original Issue Price (as defined below) per annum on each outstanding share of Series C Preferred or Series C-1 Preferred, (ii) 6% of the Series B Original Issue Price (as defined below) per annum on each outstanding share of Series B Preferred or Series B-1 Preferred and (iii) 6% of the Series A Original Issue Price (as defined below) per annum on each outstanding share of Series A Preferred. Such dividends shall be payable only when, as and if declared by the Board and shall be non-cumulative. No dividends shall be declared on any series of Junior Preferred unless dividends are declared on all series of Junior Preferred. Any partial payment of dividends pursuant to this Section 1(b) will be made among the holders of the Junior Preferred in proportion to the payment each such holder is otherwise entitled to receive. In the event that any shares of Junior Preferred convert into another series of Junior Preferred pursuant to the provisions hereof, any accrued dividends on the converted shares of Junior Preferred through the date of such conversion shall carry forward and continue as accrued dividends on the shares of the new series of Junior Preferred into which such shares are converted.

(c) The "**Series D Original Issue Price**" shall be \$.3943 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the date upon which this Fifth Amended and Restated Certificate of Incorporation is accepted for filing by the Secretary of State of the State of Delaware (the "**Filing Date**"). The "**Series C Original Issue Price**" shall be \$0.2405 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the Filing Date). The "**Series B Original Issue Price**" shall be \$0.8914 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the Filing Date). The "**Series A Original Issue Price**" shall mean the cash price received or the value of the other assets transferred in consideration for shares of Series A Preferred issued by the Company, which (i) in the case of the 600,000 shares of Series A Preferred issued by the Company prior to January 1, 2004 (and any share certificates issued or to be issued upon reissuance or transfer of such shares), shall be \$0.50 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the Filing Date) and (ii) in the case of all shares of Series A Preferred issued by the Company on or after January 1, 2004 (and any share certificates issued or to be issued upon reissuance or transfer of such shares), shall be \$0.80 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the Filing Date).

(d) In the event dividends are paid on any share of Common Stock, the Company shall pay an additional dividend on all outstanding shares of Series Preferred in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock. If there are insufficient funds legally available to pay such dividends on both the Common Stock and Series Preferred, holders of the Common Stock and Series Preferred shall participate in such dividends on a pro rata, as-converted to Common Stock basis.

(e) The provisions of Section 1(d) shall not apply to a dividend payable solely in Common Stock to which the provisions of Section 5(f) hereof are applicable or, for purposes of clarification, any repurchase of outstanding securities of the Company that is approved pursuant to Section 2(b)(iv) below.

(f) California Code Sections 502 and 503 shall not apply with respect to distributions on shares junior to the Series Preferred as they relate to repurchases of shares of Common Stock upon termination of employment or service as a consultant or director.

2. VOTING RIGHTS.

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

(b) **Separate Vote of Series Preferred.** For so long as at least 5,000,000 shares of Series Preferred (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series Preferred after the Filing Date) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding Series Preferred (voting together as a single class on an as-converted to Common Stock basis) shall be necessary for effecting or validating the following actions (whether by merger, recapitalization or otherwise):

(i) any alteration or change of the voting or other powers, preferences, or other special rights, privileges or restrictions of the Series Preferred;

(ii) any increase or decrease in the authorized number of shares of Common Stock or Preferred Stock;

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

(iv) any redemption, repurchase, payment or declaration of dividends or other distributions with respect to Common Stock or Preferred Stock (except for (A) (1) acquisition of Common Stock by the Company pursuant to agreements which permit the Company to repurchase shares of Common Stock at cost (or the lesser of cost and fair market value) upon termination of employment or services with the Company or an affiliate of the Company, (2) acquisitions of Common Stock by the Company in exercise of the Company's right of first refusal to repurchase such shares and (C) distributions to holders of Common Stock in accordance with Sections 3 and 4 hereof and (B) redemptions required by Section 6 hereof);

(v) entering into any agreement by the Company or its stockholders regarding an Asset Transfer or Acquisition (each as defined in Section 4 hereof);

(vi) any voluntary liquidation, dissolution or winding up of the Company;

(vii) any amendment, alteration or repeal of any provision of the Certificate of Incorporation or Bylaws of the Company; or

(viii) any increase or decrease in the authorized number of members of the Board.

(c) Separate Vote of Senior Preferred. For so long as at least 2,500,000 shares of Senior Preferred (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Senior Preferred after the Filing Date) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least sixty percent (60%) of the outstanding shares of Senior Preferred (voting together as a single class on an as-converted to Common Stock basis) shall be necessary for effecting or validating the following actions (whether by merger, recapitalization or otherwise):

(i) any alteration or change of the voting or other powers, preferences, or other special rights, privileges or restrictions of the Senior Preferred;

(ii) any authorization or any designation, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Company ranking on a parity with or senior to the Senior Preferred in right of redemption, liquidation preference, voting or dividend rights or any increase in the authorized or designated number of any such new class or series;

(iii) entering into any agreement by the Company or its stockholders regarding an Asset Transfer or Acquisition (each as defined in Section 4 hereof);

(iv) any voluntary liquidation, dissolution or winding up of the Company;

(v) any amendment, alteration or repeal of any provision of the Certificate of Incorporation or Bylaws of the Company; or

(vi) any increase or decrease in the authorized number of members of the Board.

(d) Election of Board of Directors.

(i) For so long as at least 5,000,000 shares of Senior Preferred remain outstanding (subject to adjustment for any stock split, reverse stock split or similar event affecting the Senior Preferred after the Filing Date) the holders of Senior Preferred, voting together as a single class on an as-converted to Common Stock basis, shall be entitled to elect

two members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors (the "**Series D Directors**").

(ii) For so long as at least 5,000,000 shares of Junior Preferred remain outstanding (subject to adjustment for any stock split, reverse stock split or similar event affecting the Senior Preferred after the Filing Date) the holders of Junior Preferred, voting together as a single class on an as-converted to Common Stock basis, shall be entitled to elect two members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(iii) The holders of Common Stock, voting as a separate class, shall be entitled to elect one member of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director.

(iv) The holders of Common Stock and Series Preferred, voting together as a single class on an as-converted to Common Stock basis, shall be entitled to elect all remaining members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(v) No person entitled to vote at an election for directors may cumulate votes to which such person is entitled, unless, at the time of such election, the Company is subject to Section 2115 of the California General Corporation Law ("**CGCL**"). During such time or times that the Company is subject to Section 2115(b) of the CGCL, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder desires. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

(vi) During such time or times that the Company is subject to Section 2115(b) of the CGCL, one or more directors may be removed from office at any time without cause by the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote for that director as provided above; *provided, however*, that unless the entire Board is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that

director if voted cumulatively at an election in which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected.

3. LIQUIDATION RIGHTS.

(a) Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary (a "**Liquidation Event**"), before any distribution or payment shall be made to the holders of any Junior Preferred or Common Stock, the holders of Senior Preferred shall be entitled to be paid out of the assets of the Company legally available for distribution for each share of Senior Preferred held by them, an amount per share of Senior Preferred equal to 1.5 times the Series D Original Issue Price plus all declared and unpaid dividends on such share of Senior Preferred. If, upon any such Liquidation Event, the assets of the Company shall be insufficient to make payment in full to all holders of Senior Preferred of the liquidation preference set forth in this Section 3(a), then such assets shall be distributed among the holders of Senior Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) After the payment of the full liquidation preference of the Senior Preferred as set forth in Section 3(a) above, before any distribution or payment shall be made to the holders of any Common Stock or Series A Preferred, the holders of Series B and C Preferred shall be entitled to be paid out of the assets of the Company legally available for distribution for each such share of Series B and C Preferred held by them, an amount per share of Series B and C Preferred equal to (a) in the case of the Series C Preferred and Series C-1 Preferred, 1.5 times the Series C Original Issue Price plus all declared and unpaid dividends on such share of Series C Preferred or Series C-1 Preferred and (b) in the case of the Series B Preferred and Series B-1 Preferred, 1.5 times the Series B Original issue Price plus all declared and unpaid dividends on such share of Series B Preferred or Series B-1 Preferred. If, upon any such Liquidation Event, the assets of the Company shall be insufficient to make payment in full to all holders of Series B and C Preferred of the liquidation preference set forth in this Section 3(b), then, subject to Section 3(a) above, such assets shall be distributed among the holders of Series B and C Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(c) After the payment of the full liquidation preference of the Senior Preferred and Series B and C Preferred as set forth in Sections 3(a) and 3(b) above, before any distribution or payment shall be made to the holders of any Common Stock, the holders of Series A Preferred shall be entitled to be paid out of the assets of the Company legally available for distribution for each share of Series A Preferred held by them, an amount per share of Series A Preferred equal to the Series A Original Issue Price plus all declared and unpaid dividends on such share of Series A Preferred. If, upon any such Liquidation Event, the assets of the Company shall be insufficient to make payment in full to all holders of Series A Preferred of the liquidation preference set forth in this Section 3(c), then, subject to Sections 3(a) and 3(b) above, such assets shall be distributed among the holders of Series A Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(d) After the payment of the full liquidation preference of the Series Preferred as set forth in Sections 3(a), 3(b) and 3(c) above, the remaining assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock and Senior Preferred (on an as-converted to Common Stock basis) until such time as the holders of Senior Preferred have received pursuant to Section 3(a) above and pursuant to this Section 3(d) an aggregate amount per share of Senior Preferred equal to two times the Series D Original Issue Price plus all declared and unpaid dividends on such share of Senior Preferred; thereafter, the remaining assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock.

4. ASSET TRANSFER OR ACQUISITION RIGHTS.

(a) In the event that the Company is a party to an Acquisition or Asset Transfer (each as hereinafter defined), then each holder of Series Preferred or Common Stock shall be entitled to receive, for each share of Series Preferred or Common Stock then held, out of the proceeds of such Acquisition or Asset Transfer, the amount of cash, securities or other property which such holder would be entitled to receive in a Liquidation Event pursuant to Section 3 above (any such event, a "**Deemed Liquidation Event**").

(b) For the purposes of this Section 4, unless the holders of (i) at least a majority of the outstanding Series Preferred (voting together as a single class on an as-converted to Common Stock basis) and (ii) at least sixty percent (60%) of the outstanding shares of Senior Preferred (voting together as a single class on an as-converted to Common Stock basis) elect otherwise by written notice given to the Company at least 10 days prior to the effective date of any such event: (i) "**Acquisition**" shall mean (A) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, other than any consolidation, merger or reorganization in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, continue to hold at least a majority of the voting power of the surviving entity in substantially the same proportions (or, if the surviving entity is a wholly owned subsidiary, its parent) as were held immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions to which the Company is a party in which in excess of 50% of the Company's voting power is transferred; provided that an Acquisition shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof; and (ii) "**Asset Transfer**" shall mean a sale, lease, exclusive license or other disposition of all or substantially all of the assets or intellectual property of the Company.

(c) In any Acquisition or Asset Transfer, if the consideration to be received is securities of a corporation or other property other than cash, its value will be deemed its fair market value as determined in good faith by the Board. Any securities shall be valued as follows:

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

(A) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the 30 day period ending three days prior to the closing;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the 30 day period ending three days prior to the closing; and

(C) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board in good faith.

(ii) 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 shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (i) (A), (B) or (C) to reflect the approximate fair market value thereof, as determined by the Board in good faith.

(d) In the case of a Deemed Liquidation Event, if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow and/or is payable to the stockholders of the Corporation subject to contingencies, the transaction documents governing the Deemed Liquidation Event shall provide that (a) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "**Initial Consideration**") shall be allocated among the holders of capital stock of the Corporation in accordance with Section 3 above as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event and (b) any additional consideration which becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Section 3 above after taking into account the previous payment of the Initial Consideration as part of the same transaction. The result of this approach is that, for certain transactions, the portion of the transaction consideration that is subject to an escrow or other contingencies may be allocated disproportionately (or even exclusively) to the holders of Common Stock.

5. CONVERSION RIGHTS.

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

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

(b) **Series Preferred Conversion Rate.**

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

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

(iii) **Series B-1 Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of the Series B-1 Preferred (the "**Series B-1 Conversion Rate**") shall be the quotient obtained by dividing the Series B Original Issue Price by the "Series B-1 Conversion Price," calculated as provided in Section 5(c)(iii).

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

(v) **Series C-1 Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of the Series C-1 Preferred (the "**Series C-1 Conversion Rate**") shall be the quotient obtained by dividing the Series C Original Issue Price by the "Series C-1 Conversion Price," calculated as provided in Section 5(c)(v).

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

(vii) **Series D-1 Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of the Series D-1 Preferred (the "**Series D-1 Conversion Rate**") shall be the quotient obtained by dividing the Series D Original Issue Price by the "Series D-1 Conversion Price," calculated as provided in Section 5(c)(vii).

(viii) **References to Conversion Rate.** The Series A Conversion Rate, the Series B Conversion Rate, the Series B-1 Conversion Rate, the Series C Conversion Rate, the Series C-1 Conversion Rate, the Series D Conversion Rate and the Series D-1 Conversion Rate are collectively referred to herein as a "**Series Preferred Conversion Rate.**"

(c) **Series Preferred Conversion Price.**

(i) **Series A Conversion Price.** The conversion price for the Series A Preferred shall initially be (a) in the case of the 600,000 shares of Series A Preferred issued by the Company prior to January 1, 2004 (and any share certificates issued or to be issued

upon reissuance or transfer of such shares), \$0.3557 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the Filing Date) and (b) in the case of all shares of Series A Preferred issued by the Company on or after January 1, 2004 (and any share certificates issued or to be issued upon reissuance or transfer of such shares), \$0.4889 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the Filing Date) (the "**Series A Conversion Price**"). The Series A Conversion Price shall be subject to further adjustment from time to time in accordance with this Section 5. All references to the Series A Conversion Price herein shall mean the Series A Conversion Price as so adjusted.

(ii) **Series B Conversion Price.** The conversion price for the Series B Preferred shall initially be \$0.5295 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the Filing Date) (the "**Series B Conversion Price**"). Such Series B Conversion Price shall be subject to further adjustment from time to time in accordance with this Section 5. All references to the Series B Conversion Price herein shall mean the Series B Conversion Price as so adjusted.

(iii) **Series B-1 Conversion Price.** The conversion price for the Series B-1 Preferred shall initially be the Series B Conversion Price (the "**Series B-1 Conversion Price**"). Such Series B-1 Conversion Price shall be subject to further adjustment from time to time in accordance with this Section 5. All references to the Series B-1 Conversion Price herein shall mean the Series B-1 Conversion Price as so adjusted.

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

(v) **Series C-1 Conversion Price.** The conversion price for the Series C-1 Preferred shall initially be the Series C Conversion Price (the "**Series C-1 Conversion Price**"). Such initial Series C-1 Conversion Price shall be subject to adjustment from time to time in accordance with this Section 5. All references to the Series C-1 Conversion Price herein shall mean the Series C-1 Conversion Price as so adjusted.

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

(vii) **Series D-1 Conversion Price.** The conversion price for the Series D-1 Preferred shall initially be the Series D Conversion Price (the "**Series D-1 Conversion Price**"). Such initial Series D-1 Conversion Price shall be subject to adjustment from time to time in accordance with this Section 5. All references to the Series D-1 Conversion Price herein shall mean the Series D-1 Conversion Price as so adjusted.

(viii) References to Conversion Price. The Series A Conversion Price, Series B Conversion Price, Series B-1 Conversion Price, Series C Conversion Price, Series C-1 Conversion Price, Series D Conversion Price and Series D-1 Conversion Price shall be collectively referred to herein as a ***“Series Preferred Conversion Price.”***

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

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

(f) Adjustment for Common Stock Dividends and Distributions. If at any time or from time to time on or after the Filing Date the Company pays to holders of Common Stock a dividend or other distribution in additional shares of Common Stock without a corresponding dividend or other distribution to holders of Series Preferred, the applicable Series Preferred Conversion Price then in effect shall be decreased as of the time of such issuance, as provided below:

(i) The applicable Series Preferred Conversion Price shall be adjusted by multiplying the applicable Series Preferred Conversion Price then in effect by a fraction:

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

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

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

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

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

(h) Sale of Shares Below Series Preferred Conversion Price.

(i) If at any time or from time to time on or after the Filing Date the Company issues or sells, or is deemed by the express provisions of this Section 5(h) to have issued or sold, Additional Shares of Common Stock (as defined below), other than as provided in Section 5(e), 5(f) or 5(g) above, for an Effective Price (as defined below) less than

the then effective Series D Conversion Price (a "*Qualifying Dilutive Issuance*") then (i) the then effective Series D Conversion Price and (ii) provided that the Effective Price is lower than the then effective Series Preferred Conversion Price of the Series A Preferred, Series B Preferred and/or Series C Preferred, the then effective Series Preferred Conversion Price of the Series A Preferred, Series B Preferred and/or Series C Preferred, as applicable, shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying such applicable Series Preferred Conversion Price in effect immediately prior to such issuance or sale by a fraction equal to:

(A) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the Aggregate Consideration (as defined below) received or deemed received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such then-existing applicable Series Preferred Conversion Price, and

(B) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued.

For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Series Preferred could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock which are issuable upon the exercise or conversion of all other rights, options and convertible securities outstanding on the day immediately preceding the given date. For purposes of clarification and notwithstanding anything to the contrary set forth in this Section 5(h), no adjustment in the Series B-1 Conversion Price, the Series C-1 Conversion Price or the Series D-1 Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock pursuant to this Section 5(h).

(ii) No adjustment shall be made to an applicable Series Preferred Conversion Price in an amount less than one cent per share. Any adjustment otherwise required by this Section 5(h) that is not required to be made due to the preceding sentence shall be included in any subsequent adjustment to the applicable Series Preferred Conversion Price.

(iii) For the purpose of making any adjustment required under this Section 5(h), the aggregate consideration received by the Company for any issue or sale of securities (the "*Aggregate Consideration*") shall be defined as: (A) to the extent it consists of cash, the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale and without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, the fair value of that property as determined in good faith by the Board, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined below) or rights or options to purchase either Additional

Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

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

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

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

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

(D) No further adjustment of the applicable Series Preferred Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock or the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the applicable Series Preferred

Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the applicable Series Preferred Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, *provided* that such readjustment shall not apply to prior conversions of Series Preferred.

(v) For the purpose of making any adjustment to the applicable Series Preferred Conversion Price of the Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred as required under this Section 5(h), ***“Additional Shares of Common Stock”*** shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 5(h) (including shares of Common Stock subsequently reacquired or retired by the Company), other than:

(A) shares of Common Stock issued upon conversion of or as a dividend or distribution on the Series Preferred;

(B) shares of Common Stock or Convertible Securities issued after the Filing Date to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board, including the affirmative vote or written consent of at least one Series D Director;

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

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

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

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

(G) shares of Series D Preferred issued at the Closing or at any Additional Closing (as such terms are defined in the Series D Preferred Stock Purchase Agreement dated on or about the Filing Date (the "**Purchase Agreement**")), and shares of Common Stock issued upon conversion of such shares of Series D Preferred; and

(H) shares of Series B-1 Preferred, Series C-1 Preferred or Series D-1 Preferred.

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

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

(vii) (A) For purposes of this Section 5(h)(vii), the following definitions shall apply:

(1) "**Triggering Event**" shall mean the issuance by the Company, in a bona fide fundraising transaction, of Additional Shares of Common Stock with an Effective Price less than the Series D Conversion Price in effect on the date of and immediately prior to such issue, *provided, however*, that the issuance of shares of Series D Preferred pursuant to the Purchase Agreement shall not constitute a Triggering Event.

(2) "**Participating Investor**" shall mean any holder of Series B Preferred, Series C Preferred and/or Series D Preferred that agrees to purchase at least its Pro Rata Share of a Triggering Event pursuant to this Section 5(h)(vii).

(3) "**Pro Rata Rate**" shall mean, with respect to any holder of shares of Series B Preferred, Series C Preferred and/or Series D Preferred, the ratio

expressed as a fraction, the numerator of which is the number of shares of Common Stock into which such holder's shares of Series B Preferred, Series C Preferred and/or Series D Preferred are convertible as of immediately prior to a Triggering Event, and the denominator of which is the total number of outstanding shares of Common Stock of the Company (calculated assuming conversion and exercise of all Convertible Securities) as of immediately prior to such Triggering Event.

(4) ***"Pro Rata Share"*** shall mean, with respect to a holder of Series B Preferred, Series C Preferred and/or Series D Preferred at the time of the occurrence of a Triggering Event, the product of the aggregate number of shares issued in connection with such Triggering Event times such holder's Pro Rata Rate.

(5) ***"Non-participating Investor"*** shall mean any holder of Series B Preferred, Series C Preferred and/or Series D Preferred that is not a Participating Investor.

(B) In the event the Company proposes to undertake a Triggering Event, it shall give each holder of Series B Preferred, Series C Preferred and Series D Preferred a written notice (the ***"Issuance Notice"***) of its intention, describing the type of Additional Shares of Common Stock to be issued therein, the Effective Price at which such Additional Shares of Common Stock are to be issued and the general terms upon which the Company proposes to effect such issuance. Each holder of Series B Preferred, Series C Preferred and/or Series D Preferred shall, within 15 days from the date the Issuance Notice is delivered, provide written notice to the Company that (i) such holder of Series B Preferred, Series C Preferred and/or Series D Preferred shall be a Participating Investor for the price and upon the terms specified in the Issuance Notice or (ii) such holder of Series B Preferred, Series C Preferred or Series D Preferred shall be a Non-participating Investor. Any holder of Series B Preferred, Series C Preferred and/or Series D Preferred as to whom such written notice is not received by the Company within such 15 day period shall be deemed to be a Non-participating Investor.

(C) In connection with any Triggering Event, all shares of Series B Preferred, Series C Preferred and/or Series D Preferred held by each Non-Participating Investor shall be automatically converted immediately prior to the closing of the applicable Triggering Event into an equal number of shares of Series B-1 Preferred, Series C-1 Preferred or Series D-1 Preferred, as applicable. The Series B-1 Conversion Price, Series C-1 Conversion Price or Series D-1 Conversion Price, as applicable, for any shares converted as the result of non-participation in a Triggering Event shall be equal to the applicable Series B Conversion Price, Series C Conversion Price or Series D Conversion Price in effect immediately prior to such Triggering Event, and, for the avoidance of confusion, shall not be subject to further adjustment pursuant to Section 5(h), but shall be subject to further adjustment pursuant to the remainder of Section 5. Each Convertible Security exercisable for shares of Series B Preferred, Series C Preferred and/or Series D Preferred held by any Non-Participating Investor shall automatically be converted into a Convertible Security (on identical terms) to purchase an equal number of shares of Series B-1 Preferred, Series C-1 Preferred or Series D-1 Preferred, as

applicable, on the same terms and for the same exercise price as otherwise set forth in such Convertible Security.

(D) Upon the conversion of Series B Preferred, Series C Preferred and/or Series D Preferred held by a Non-participating Investor as set forth herein, the outstanding shares of Series B Preferred, Series C Preferred and/or Series D Preferred to be converted shall be converted automatically without any further action by the holder of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; *provided, however*, that the Company shall not be obligated to issue certificates evidencing the shares of Series B-1 Preferred, Series C-1 Preferred and/or Series D-1 Preferred issuable upon such conversion unless the certificates evidencing such shares of Series B Preferred, Series C Preferred and/or Series D Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of shares of Series B Preferred, Series C Preferred and/or Series D Preferred as described in this Section 5(h)(vii), the holders of Series B Preferred, Series C Preferred and/or Series D Preferred to be converted shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series B Preferred, Series C Preferred and/or Series D Preferred, as applicable. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Series B-1 Preferred, Series C-1 Preferred or Series D-1 Preferred into which such shares of Series B Preferred, Series C Preferred or Series D Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d). In the event that any shares of Series B-1 Preferred, Series C-1 Preferred or Series D-1 Preferred are issued, concurrently with such issuance, the Company shall use reasonable efforts to take all such actions as may be required (including amending this Fifth Amended and Restated Certificate of Incorporation) to (i) create and reserve for issuance new series of Preferred Stock equal in number to the number of shares of Series B Preferred, Series C Preferred and/or Series D Preferred, as applicable, that remain outstanding immediately following the closing of the Triggering Event, such new series of Preferred Stock to be designated Series B-2 Preferred Stock, Series C-2 Preferred Stock and/or Series D-2 Preferred Stock, as applicable, and to have rights, preferences and privileges identical to those then applicable to the Series B Preferred, Series C Preferred or Series D Preferred, as applicable, except that the Series Preferred Conversion Price for such shares of Series B-2 Preferred Stock, Series C-2 Preferred Stock and/or Series D-2 Preferred Stock once initially issued shall be equal to the applicable Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as applicable, in effect as of such issuance and (ii) amend the provisions of this subsection to provide that any subsequent conversion of Series B Preferred, Series C Preferred or Series D Preferred hereunder will be into shares of Series B-2 Preferred Stock, Series C-2 Preferred Stock or Series D-2 Preferred Stock, as applicable.

(i) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the applicable Series Preferred Conversion Price for the number of shares of

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

(j) Notices of Record Date. Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section 4) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section 4), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series Preferred at least 10 days prior to (x) the record date, if any, specified therein; or (y) if no record date is specified, the date upon which such action is to take effect (or, in either case, such shorter period approved by the holders of (1) at least a majority of the outstanding Series Preferred, voting or consenting together as a single class on an as-converted to Common Stock basis and (2) at least sixty percent (60%) of the outstanding Senior Preferred, voting or consenting together as a single class on an as-converted to Common Stock basis) a notice specifying, as applicable, (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(k) Automatic Conversion.

(i) Each share of Series Preferred shall automatically be converted into shares of Common Stock, based on the then-effective applicable Series Preferred Conversion Price, (A) at any time upon the affirmative election of the holders of (1) at least a majority of the outstanding shares of the Series Preferred, voting together as a single class on an as-converted to Common Stock basis and (2) at least sixty percent (60%) of the outstanding shares of Senior Preferred, voting together as a single class on an as-converted to Common Stock

basis or (B) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least three times the Series D Original Issue Price and (ii) the gross proceeds to the Company (before taking into account underwriting discounts, commissions and fees) are at least \$30,000,000 (a "*Qualified IPO*"). Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

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

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

(m) **Reservation of Stock Issuable Upon Conversion.** The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series Preferred, 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 Series Preferred. 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 Series Preferred, the Company will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

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

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

6. REDEMPTION.

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

(i) The holders of at least sixty percent (60%) of the then outstanding shares of Senior Preferred, voting together as a single class on an as-converted to Common Stock basis, may elect to require the Company, to the extent it may lawfully do so, to redeem all of the then outstanding Senior Preferred held by them in three annual installments beginning not prior to the fifth anniversary of the Filing Date (each a ***“Senior Preferred Redemption Date”***); *provided* that the Company shall receive at least 60 days prior to such the first such Senior Preferred Redemption Date written notice of such election. The Company shall effect such redemptions on each Senior Preferred Redemption Date by paying in cash in exchange for the shares of Senior Preferred to be redeemed on such Senior Preferred Redemption Date a sum equal to the Series D Original Issue Price per share of Senior Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the Filing Date) plus an amount equal to 6% per annum (calculated from the date of issuance of such share (or, if applicable, the date of issuance of the share of Series D Preferred subsequently converted into such share of Series D-1 Preferred pursuant to Section 5(h)(vii) above)) of the Series D Original Issue Price. The total amount to be paid for the Senior Preferred to be redeemed pursuant to any such redemption request from the holders of the Senior Preferred is hereinafter referred to as the ***“Senior Preferred Redemption Price.”*** The number of shares of Senior Preferred that the Company shall be required to redeem on any one Senior Preferred Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of Senior Preferred to be redeemed which are outstanding immediately prior to the Senior Preferred Redemption Date by (B) the number of remaining Senior Preferred Redemption Dates (including the Senior Preferred Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 6(a)(i) shall be redeemed from each holder of Senior Preferred electing redemption on a pro rata basis, based on the number of shares of Senior Preferred then outstanding held by such electing holders.

(ii) The holders of at least 33-1/3% of the then outstanding shares of Series B and C Preferred, voting together as a single class on an as-converted to Common Stock basis, may elect to require the Company, to the extent it may lawfully do so, to redeem all of the then outstanding Series B and C Preferred held by them in three annual installments beginning not prior to the fifth anniversary of the Filing Date (each a ***“Series B and C Preferred Redemption Date”***); *provided* that the Company shall receive at least 60 days prior to the first such Series B and C Preferred Redemption Date written notice of such election; *provided, further*, that the first Series B and C Preferred Redemption Date may not occur until following the first Senior Preferred Redemption Date. The Company shall effect such redemptions on each Series B and C Preferred Redemption Date by paying in cash in exchange for the shares of Series B and C Preferred to be redeemed on such Series B and C Preferred Redemption Date a sum equal to (a) in the case of the Series B Preferred or Series B-1 Preferred, the Series B Original Issue Price per share of Series B Preferred or Series B-1 Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the Filing Date) plus an amount equal to 6% per annum (calculated from the date of issuance of such share (or, if applicable, the date of issuance of the share of Series B Preferred subsequently converted into such share of Series B-1 Preferred pursuant to Section 5(h)(vii) above)) of the Series B Original Issue Price and (b) in the case of the Series C Preferred or Series C-1 Preferred, the Series C Original Issue Price per share of Series C Preferred or Series C-1 Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the Filing Date) plus an amount equal to 6% per annum (calculated from the date of issuance of such share (or, if applicable, the date of issuance of the share of Series C Preferred subsequently converted into such share of Series C-1 Preferred pursuant to Section 5(h)(vii) above)) of the Series C Original Issue Price. The total amount to be paid for the Series B and C Preferred to be redeemed pursuant to any such redemption request from the holders of the Series B and C Preferred is hereinafter referred to as the ***“Series B and C Preferred Redemption Price.”*** The number of shares of Series B and C Preferred that the Company shall be required to redeem on any one Series B and C Preferred Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of Series B and C Preferred to be redeemed which are outstanding immediately prior to the Series B and C Preferred Redemption Date by (B) the number of remaining Series B and C Preferred Redemption Dates (including the Series B and C Preferred Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 6(a)(ii) shall be redeemed from each holder of Series B and C Preferred electing redemption on a pro rata basis, based on the number of shares of Series B and C Preferred then outstanding held by such electing holders.

(iii) The holders of at least 33-1/3% of the then outstanding shares of Series A Preferred, voting as a separate class, may elect to require the Company, to the extent it may lawfully do so, to redeem all of the then outstanding Series A Preferred held by them in three annual installments beginning not prior to the fifth anniversary of the Filing Date (each a ***“Series A Redemption Date”*** and, together with a Senior Preferred Redemption Date and a Series B and C Preferred Redemption Date, a ***“Redemption Date”***); *provided* that the Company shall receive at least 60 days prior to such the first such Series A Redemption Date written notice of such election; *provided, further*, that the first Series A Redemption Date may not occur until following the first Senior Preferred Redemption Date and the first Series B and C Preferred

Redemption Date. The Company shall effect such redemptions on each Series A Redemption Date by paying in cash in exchange for the shares of Series A Preferred to be redeemed on such Series A Redemption Date a sum equal to the Series A Original Issue Price per share of Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the Filing Date) plus an amount equal to 6% per annum (calculated from the date of issuance of such share) of the Series A Original Issue Price. The total amount to be paid for the Series A Preferred to be redeemed pursuant to any such redemption request from the holders of the Series A Preferred is hereinafter referred to as the "**Series A Redemption Price**" (and, together with the Senior Preferred Redemption Price and the Series B and C Redemption Price, the "**Redemption Price**"). The number of shares of Series A Preferred that the Company shall be required to redeem on any one Series A Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of Series A Preferred to be redeemed which are outstanding immediately prior to the Series A Redemption Date by (B) the number of remaining Series A Redemption Dates (including the Series A Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 6(a)(iii) shall be redeemed from each holder of Series A Preferred electing redemption on a pro rata basis, based on the number of shares of Series A Preferred then outstanding held by such electing holders.

(iv) At least 30 days but no more than 60 days prior to the first applicable Redemption Date, the Company shall send a notice (a "**Redemption Notice**") to all holders of Series Preferred to be redeemed setting forth (A) the applicable Redemption Price for the shares to be redeemed; and (B) the place at which such holders may obtain payment of the applicable Redemption Price upon surrender of their share certificates.

(v) Notwithstanding anything to the contrary set forth in this Section 6, in the event that the Company is unable pursuant to applicable law to redeem in full all of the outstanding shares of Senior Preferred to be redeemed on any Senior Preferred Redemption Date, (i) the shares not redeemed shall be redeemed by the Company as provided in this Section 6 as soon as practicable after funds are legally available therefor, (ii) the holders of Senior Preferred to be redeemed shall share ratably in any funds available for redemption on the applicable Senior Preferred Redemption Date and (iii) no funds shall be used for the redemption of any shares of Junior Preferred or other stock of the Company until such time as all shares of Senior Preferred to be redeemed on such Senior Preferred Redemption Date have been redeemed. At any time thereafter when additional funds of the Company are available by law for the redemption of the Senior Preferred, such funds shall be used to redeem the balance of such shares, or such portion thereof for which funds are available, on the basis set forth above.

(vi) Subject to the redemption of the Senior Preferred and the payment in full of the aggregate Senior Preferred Redemption Price at each Senior Preferred Redemption Date as contemplated by subsection (v) above, in the event that the Company is unable pursuant to applicable law to redeem in full all of the outstanding shares of Series B and C Preferred to be redeemed on any Series B and C Preferred Redemption Date, (i) the shares not redeemed shall be redeemed by the Company as provided in this Section 6 as soon as practicable after funds are legally available therefor and (ii) the holders of Series B and C Preferred to be redeemed shall share ratably in any funds available for redemption on the applicable Series B and C Preferred Redemption Date. Subject to section (v) above, at any time thereafter when

additional funds of the Company are available by law for the redemption of the Series B and C Preferred, such funds shall be used to redeem the balance of such shares, or such portion thereof for which funds are available, on the basis set forth above.

(vii) Subject to the redemption of the Senior Preferred and the Series B and C Preferred and the payment in full of the aggregate Senior Preferred Redemption Price at each Senior Preferred Redemption Date as contemplated by subsection (v) above and the payment in full of the aggregate Series B and C Preferred Redemption Price at each Series B and C Preferred Redemption Date as contemplated by subsection (vi) above, in the event that the Company is unable pursuant to applicable law to redeem in full all of the outstanding shares of Series A Preferred to be redeemed on any Series A Redemption Date, (i) the shares not redeemed shall be redeemed by the Company as provided in this Section 6 as soon as practicable after funds are legally available therefor and (ii) the holders of Series A Preferred to be redeemed shall share ratably in any funds available for redemption on the applicable Series A Redemption Date. Subject to sections (v) and (vi) above, at any time thereafter when additional funds of the Company are available by law for the redemption of the Series A Preferred, such funds shall be used to redeem the balance of such shares, or such portion thereof for which funds are available, on the basis set forth above.

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

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

available funds, such shares of Series Preferred shall remain outstanding and shall be entitled to all of the rights and preferences provided herein until redeemed.

(d) In the event of a call for redemption of any shares of Series Preferred, the Conversion Rights (as defined in Section 5) for such Series Preferred shall terminate as to the shares designated for redemption at the close of business on the last business day preceding the applicable Redemption Date, unless default is made in payment of the applicable Redemption Price.

7. NO REISSUANCE OF SERIES PREFERRED.

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

V.

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

B. The Company is authorized to provide indemnification of agents (as defined in Section 317 of the CGCL) for breach of duty to the Company and its stockholders through bylaw provisions or through agreements with the agents, or through stockholder resolutions, or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the CGCL, subject, at any time or times that the Company is subject to Section 2115(b) of the CGCL, to the limits on such excess indemnification set forth in Section 204 of the CGCL.

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

VI.

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

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

B. The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Company, subject to any restrictions which may be set forth in this Fifth Amended and Restated Certificate of Incorporation. The stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Company, subject to any restrictions which may be set forth in this Fifth Amended and Restated Certificate of Incorporation; provided however, that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by

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

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

* * * *

FOUR: This Fifth Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of this corporation.

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

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IN WITNESS WHEREOF, AWAREPOINT CORPORATION has caused this Fifth Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this 10th day of November, 2008.

AWAREPOINT CORPORATION

By: /s/ Jason Howe

Name: Jason Howe

Title: Chief Executive Officer