

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION

OF

EXPERTVOICE, INC.

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

The undersigned, Thomas G. Stockham, certifies that he is the Chief Executive Officer of ExpertVoice, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware, as from time to time amended, and does hereby further certify as follows:

1. The name of the corporation is ExpertVoice, Inc. The Certificate of Incorporation of the corporation was originally filed with the Secretary of State of the State of Delaware on December 1, 2004 under the name of 3point5, Inc.

2. This Amended and Restated Certificate of Incorporation of ExpertVoice, Inc. has been duly adopted in accordance with the provisions of Sections 228, 242, and 245 of the General Corporation Law of the State of Delaware and written notice of the adoption of this Amended and Restated Certificate of Incorporation has been given as provided by Section 228 of the General Corporation Law of the State of Delaware to the stockholders entitled to such notice.

3. The text of the Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

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

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

THIRD. The purpose of the Corporation 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, as from time to time amended (the "DGCL").

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 59,625,708 shares, consisting of:

(i) 38,000,000 shares of Common Stock, \$0.001 par value per share ("Common Stock") and

(ii) 21,625,708 shares of Preferred Stock, \$0.001 par value per share ("Preferred Stock"), of which 2,562,500 shares shall be designated Series A Convertible Preferred Stock (the "Series A Preferred Stock"), 6,827,776 shares shall be designated

Series B Convertible Preferred Stock (the “Series B Preferred Stock”), 5,733,380 shares shall be designated Series C Convertible Preferred Stock (the “Series C Preferred Stock”), 4,887,365 shares shall be designated Series D Convertible Preferred Stock (the “Series D Preferred Stock”) and 1,614,687 shares shall be designated Series D-1 Convertible Preferred Stock (the “Series D-1 Preferred Stock”).

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK.

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

2. Voting. Except as otherwise provided in this Amended and Restated Certificate of Incorporation, the holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of DGCL.

3. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock. No dividend shall be paid on any share of Common Stock (other than stock dividend on the Common Stock payable solely in the form of additional shares of Common Stock) unless all accrued and/or declared and unpaid dividends on the Preferred Stock provided for in Section B below have been paid in full.

B. PREFERRED STOCK.

1. Dividends.

(a) From and after the date of issuance of any shares of Series D Preferred Stock or Series D-1 Preferred Stock, the holders of record of shares of Series D Preferred Stock (the “Series D Preferred Stock Holders”) and the holders of record of shares of Series D-1 Preferred Stock (the “Series D-1 Preferred Stock Holders”) shall be entitled to receive, out of funds legally available therefor, for each share of Series D Preferred Stock or Series D-1 Preferred Stock, dividends at the annual rate of eight percent (8%) of the Series D Original Purchase Price or Series D-1 Original Purchase Price, as the case may be, prior and in preference to any declaration or payment of any dividend to the holders of shares of Series C Preferred Stock, Series B Preferred Stock, Series A Preferred Stock or Common Stock. Dividends on the Series D Preferred Stock and Series D-1 Preferred Stock shall be payable on a *pro rata, pari passu* basis only when, as and if declared by the Board of Directors of the Corporation and shall be cumulative, non-compounding and accrue daily from and after the date of the original issuance of each share of Series D Preferred Stock or Series D-1 Preferred Stock, as applicable,

to which the dividend relates, whether or not earned or declared, and whether or not there are earnings or profits, surplus or other funds or assets of the Corporation legally available for the payment of dividends.

(b) No dividend shall be declared or paid on shares of Series C Preferred Stock unless the provisions of subsection 1(a) are satisfied. From and after the date of issuance of any shares of Series C Preferred Stock, the holders of record of shares of Series C Preferred Stock (the “Series C Preferred Stock Holders”) shall be entitled to receive, out of funds legally available therefor, for each share of Series C Preferred Stock, dividends at the annual rate of eight percent (8%) of the Series C Original Purchase Price (as defined below), prior and in preference to any declaration or payment of any dividend to the holders of shares of Series B Preferred Stock, Series A Preferred Stock and Common Stock. Dividends on the Series C Preferred Stock shall be payable only when, as and if declared by the Board of Directors of the Corporation and shall be cumulative, non-compounding and accrue daily from and after the date of the original issuance of each share of Series C Preferred Stock, whether or not earned or declared, and whether or not there are earnings or profits, surplus or other funds or assets of the Corporation legally available for the payment of dividends

(c) No dividend shall be declared or paid on shares of Series B Preferred Stock or Series A Preferred Stock unless the provisions of subsections 1(a) and 1(b) are satisfied. From and after the date of issuance of any shares of Series B Preferred Stock or Series A Preferred Stock, the holders of record of shares of Series B Preferred Stock (the “Series B Preferred Stock Holders”) and the holders of record of shares of Series A Preferred Stock (the “Series A Preferred Stock Holders” and along with the Series D-1 Preferred Stock Holders, Series D Preferred Stock Holders, Series C Preferred Stock Holders and Series B Preferred Stock Holders, collectively, the “Preferred Stock Holders”) shall be entitled to receive, out of funds legally available therefor, for each share of Series B Preferred Stock or Series A Preferred Stock, dividends at the annual rate of eight percent (8%) of the Series B Original Purchase Price or Series A Original Purchase Price, as the case may be, prior and in preference to any declaration or payment of any dividend to the holders of shares of Common Stock. Dividends on the Series B Preferred Stock and Series A Preferred Stock shall be payable on a *pro rata, pari passu* basis only when, as and if declared by the Board of Directors of the Corporation and shall be cumulative, non-compounding and accrue daily from and after the date of the original issuance of each share of Series A Preferred Stock or Series B Preferred Stock, as applicable, to which the dividend relates, whether or not earned or declared, and whether or not there are earnings or profits, surplus or other funds or assets of the Corporation legally available for the payment of dividends.

(d) In the event that the Board of Directors of the Corporation shall declare a dividend payable upon the then outstanding shares of Common Stock (other than a stock dividend on the Common Stock payable solely in the form of additional shares of Common Stock), the Preferred Stock Holders shall be entitled, in addition to any dividends to which the Series D-1 Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock may be entitled under subsections 1(a), 1(b) and 1(c), to receive the amount of dividends per share of the applicable Preferred Stock that would be payable on the number of whole shares of the Common Stock into which each share of such Preferred Stock held by each holder could be converted pursuant to the provisions of Section 5

below, such number to be determined as of the record date for the determination of holders of Common Stock entitled to receive such dividend.

(e) The Board of Directors of the Corporation may fix a record date for the determination of holders of shares of Common Stock or Preferred Stock entitled to receive payment of a dividend declared thereon, which record date shall be no more than 60 days and no less than 10 days prior to the date fixed for the payment thereof.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(a) Preferential Payments to the Series D Preferred Stock Holders and Series D-1 Preferred Stock Holders. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event (as defined below), after payment or provision for payment of all debts and liabilities of the Corporation, each holder of shares of Series D Preferred Stock and Series D-1 Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Series C Preferred Stock, Series B Preferred Stock, Series A Preferred Stock or Common Stock, an amount per share of Series D Preferred Stock or Series D-1 Preferred Stock held by such holder equal to the Series D Original Purchase Price or Series D-1 Original Purchase Price, as the case may be (which amounts shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination of shares, reclassification or other similar event with respect to the Series D Preferred Stock or Series D-1 Preferred Stock, respectively) plus an amount equal to all accrued and/or declared and unpaid dividends on the Series D Preferred Stock or the Series D-1 Preferred Stock, as the case may be. If upon any such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or such Deemed Liquidation Event, the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series D Preferred Stock and Series D-1 Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series D Preferred Stock and the holders of shares of Series D-1 Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) Preferential Payments to the Series C Preferred Stock Holders. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, after payment or provision for payment of all debts and liabilities of the Corporation and after payment of all amounts owing to the Series D Preferred Stock and Series D-1 Preferred Stock under subsection 2(a), each holder of shares of Series C Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Series B Preferred Stock, Series A Preferred Stock or Common Stock, an amount per share of Series C Preferred Stock held by such holder equal to the Series C Original Purchase Price (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination of shares, reclassification or other similar event with respect to the Series C Preferred Stock) plus an amount equal to all accrued and/or declared and unpaid

dividends on the Series C Preferred Stock. If upon any such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or such Deemed Liquidation Event, the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series C Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series C Preferred Stock and any class or series of stock ranking on liquidation on a parity with the Series C Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(c) Preferential Payments to the Series B Preferred Stock Holders and Series A Preferred Stock Holders. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, after payment or provision for payment of all debts and liabilities of the Corporation and after payment of all amounts owing to the Series D Preferred Stock and Series D-1 Preferred Stock under subsection 2(a) and all amounts owing to the Series C Preferred Stock under subsection 2(b), each holder of shares of Series B Preferred Stock and Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Common Stock, an amount per share of Series B Preferred Stock or Series A Preferred Stock held by such holder equal to the Series B Original Purchase Price or Series A Original Purchase Price, as the case may be (which amounts shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination of shares, reclassification or other similar event with respect to the Series B Preferred Stock or Series A Preferred Stock, respectively) plus an amount equal to all accrued and/or declared and unpaid dividends on the Series B Preferred Stock or the Series A Preferred Stock, as the case may be. If upon any such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or such Deemed Liquidation Event, the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series B Preferred Stock and Series A Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series B Preferred Stock and Series A Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(d) Distribution of Remaining Assets.

(i) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, after the payment of all preferential amounts required to be paid pursuant to subsections 2(a), 2(b) and 2(c), the remaining assets and funds of the Corporation available for distribution to its stockholders shall be distributed ratably among the holders of shares of Common Stock.

(ii) Notwithstanding the provisions of this subsection 2(d) and the previous subsections 2(a), 2(b) and 2(c), if the amount a holder of Preferred Stock would receive with respect to such shares would be greater if such shares were converted to Common Stock immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event, the

holder of such shares will be paid that higher amount in lieu of payments called for by subsections 2(a), 2(b) and 2(c).

(iii) The amount in the aggregate that the holders of Series D-1 Preferred Stock are entitled to receive pursuant to this Section 2 for each share of Series D-1 Preferred Stock shall be referred to as the “Series D-1 Liquidation Preference.” The amount in the aggregate that the holders of Series D Preferred Stock are entitled to receive pursuant to this Section 2 for each share of Series D Preferred Stock shall be referred to as the “Series D Liquidation Preference.” The amount in the aggregate that the holders of Series C Preferred Stock are entitled to receive pursuant to this Section 2 for each share of Series C Preferred Stock shall be referred to as the “Series C Liquidation Preference.” The amount in the aggregate that the holders of Series B Preferred Stock are entitled to receive pursuant to this Section 2 for each share of Series B Preferred Stock shall be referred to as the “Series B Liquidation Preference.” The amount in the aggregate that the holders of Series A Preferred Stock are entitled to receive pursuant to this Section 2 for each share of Series A Preferred Stock shall be referred to as the “Series A Liquidation Preference.”

(e) Deemed Liquidation Events. Unless holders of a majority of the Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class, and the holders of a majority of the Series C Preferred Stock, voting separately as a single class, elect otherwise by written notice sent to the Corporation, any (i) merger, reorganization, consolidation or share transfer which results in the voting securities of the Corporation outstanding immediately prior thereto representing immediately thereafter (either by remaining outstanding or by being converted into voting securities of the surviving or acquiring entity) less than a majority of the combined voting power of the voting securities of the Corporation or such surviving or acquiring entity outstanding immediately after such merger, reorganization, consolidation or share transfer, (ii) disposition, transfer, sale or exclusive lease or license of all or substantially all of the assets of the Corporation or (iii) issuance or transfer of shares of capital stock of the Corporation, in a single transaction or series of related transactions, representing at least fifty percent (50%) of the voting power of the voting securities of the Corporation, shall be deemed to be a liquidation of the Corporation (each a “Deemed Liquidation Event”). A sale (or multiple related sales) of one or more Subsidiaries of the Corporation (whether by way of merger, consolidation, reorganization or sale of all or substantially all of the Subsidiaries’ assets or securities) which constitutes all or substantially all of the consolidated assets of the Corporation shall be deemed a sale of substantially all of the assets of the Corporation for purposes of this subsection 2(e). The Corporation shall promptly provide to the holders of shares of Preferred Stock such information concerning the terms of a Deemed Liquidation Event and the value of the assets of the Corporation as may reasonably be requested by the holders of Preferred Stock. If applicable, the Corporation shall cause the agreement or plan of merger or consolidation to provide for a rate at which the shares of capital stock of the Corporation are converted into or exchanged for cash, new securities or other property which gives effect to this Section 2(e).

(f) Effecting a Deemed Liquidation Event.

(i) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in subsection 2(e)(i) unless the agreement or plan of merger or consolidation for such transaction (the “Merger Agreement”) provides that the consideration

payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with subsections 2(a), 2(b) and 2(c).

(ii) In the event of a Deemed Liquidation Event referred to in subsection 2(e)(ii) or 2(e)(iii), if the Corporation does not effect a dissolution of the Corporation under the DGCL within 5 days after such Deemed Liquidation Event, then (A) the Corporation shall send a written notice to each holder of Preferred Stock no later than the 5th day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (B) to require the redemption of such shares of Preferred Stock, and (B) unless the holders of a majority of the Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class, and the holders of a majority of the Series C Preferred Stock, voting separately as a single class, otherwise agree in a written instrument delivered to the Corporation not later than 10 days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to its stockholders (the "Available Proceeds"), to the extent legally available therefor, on the 15th day after such Deemed Liquidation Event, to redeem all outstanding shares of Series D Preferred Stock at a price per share equal to the Series D Liquidation Preference and the Series D-1 Preferred Stock at a price per share equal to the Series D-1 Liquidation Preference, on a pro rata basis, and once the Series D Preferred Stock and Series D-1 Preferred Stock has been fully redeemed, all outstanding shares of Series C Preferred Stock at a price per share equal to the Series C Liquidation Preference, and once the Series C Preferred Stock has been fully redeemed, all outstanding shares of Series B Preferred Stock at a price per share equal to the Series B Liquidation Preference and the Series A Preferred Stock at a price per share equal to the Series A Liquidation Preference, on a pro rata basis. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, (X) if the Available Proceeds are not sufficient to redeem all outstanding shares of Series D Preferred Stock and Series D-1 Preferred Stock, the Corporation shall redeem a pro rata portion of each holder's shares of Series D Preferred Stock or Series D-1 Preferred Stock, as applicable, to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor, (Y) after redemption in full of the Series D Preferred Stock and Series D-1 Preferred Stock, if the Available Proceeds are not sufficient to redeem all outstanding shares of Series C Preferred Stock, the Corporation shall redeem a pro rata portion of each holder's shares of Series C Preferred Stock to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor and (Z) after redemption in full of the Series D Preferred Stock, Series D-1 Preferred Stock and Series C Preferred Stock, if the Available Proceeds are not sufficient to redeem all outstanding shares of Series B Preferred Stock and Series A Preferred Stock, the Corporation shall redeem a pro rata portion of each holder's shares of Series B Preferred Stock and Series A Preferred Stock to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if

the Available Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. The provisions of Section 8 shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Preferred Stock pursuant to this subsection 2(f)(ii). Prior to the distribution or redemption provided for in this subsection 2(f)(ii), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event.

(g) The Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of Preferred Stock upon any liquidation, dissolution, or winding-up (including any Deemed Liquidation Event) shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. If the amount distributed to the holders of Preferred Stock upon any liquidation, dissolution, or winding-up (including any Deemed Liquidation Event) is made in property other than cash, the fair market value of such property, rights, or securities distributed to such holders shall be mutually agreed by the Board of Directors of the Corporation and holders of a majority of the Series D Preferred Stock and Series D-1 Preferred Stock voting together as a single class, and the holders of a majority of the Series C Preferred Stock, voting separately as a single class; provided, however, that if such mutual agreement cannot be reached, such fair market value shall be determined by following the procedures set forth in the definition of Appraisal Procedure.

3. Voting.

(a) General. Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible (as adjusted from time to time pursuant to subsection 4 hereof) as of the record date, at each meeting of stockholders of the Corporation (and written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Holders of Preferred Stock shall be entitled to notice of any meeting of stockholders and, except as otherwise provided herein or otherwise required by law, to vote together with the Common Stockholders as a single class (on an as-converted basis).

(b) Series D Preferred Stock Director. For so long as the holders of record of the shares of Series D Preferred Stock own at least eight percent (8%) of the Fully Diluted Equity (as defined below), the holders of record of the shares of Series D Preferred Stock shall have the right, voting at a meeting of stockholders called for the purpose or by written consent, separately from the Common Stock and all other series of Preferred Stock, to elect one (1) individual (the “Series D Director”) to serve on the Board of Directors of the Corporation. So long as the holders of record of the shares of Series D Preferred Stock shall have the right to elect a director pursuant to this subsection 3(b), any member of the Board of Directors elected pursuant to this subsection 3(b) may be removed at any time with or without cause by, and only by, the affirmative vote of a majority of the voting power of the then outstanding Series D Preferred Stock. Any vacancy on the Board of Directors created by the resignation, removal, incapacity or death of any director elected pursuant to this subsection 3(b) shall only be filled by

the holders of a majority of the Series D Preferred Stock, or another individual elected pursuant to this subsection 3(b).

(c) Series C Preferred Stock Directors. The holders of record of the shares of Series C Preferred Stock shall have the right, voting at a meeting of stockholders called for the purpose or by written consent, separately from the Common Stock and all other series of Preferred Stock,

(i) for so long as the holders of record of the shares of Series C Preferred Stock own at least twenty percent (20%) of the Fully Diluted Equity (as defined below), to elect two (2) individuals (the “Series C Directors”) to serve on the Board of Directors of the Corporation.

(ii) for so long as the holders of record of the shares of Series C Preferred Stock own at least ten percent (10%) but less than twenty percent (20%) of the Fully Diluted Equity, to elect one (1) Series C Director to serve on the Board of Directors of the Corporation.

(iii) So long as the holders of record of the shares of Series C Preferred Stock shall have the right to elect a director pursuant to this subsection 3(c), any member of the Board of Directors elected pursuant to this subsection 3(c) may be removed at any time with or without cause by, and only by, the affirmative vote of a majority of the voting power of the then outstanding Series C Preferred Stock. Any vacancy on the Board of Directors created by the resignation, removal, incapacity or death of any director elected pursuant to this subsection 3(c) shall only be filled by the holders of a majority of the Series C Preferred Stock or another individual elected pursuant to this subsection 3(c).

(d) Series A Preferred Stock and Series B Preferred Stock Directors. For so long as at least 2,347,569 shares in the aggregate of Series A Preferred Stock and Series B Preferred Stock remain outstanding (subject to adjustment for a stock dividend, stock split, combination of shares, reclassification or other similar event with respect to the Series A Preferred Stock or Series B Preferred Stock), the holders of record of the shares of Series A Preferred Stock and Series B Preferred Stock shall have the right, voting together as a single class, at a meeting of stockholders called for the purpose or by written consent, separately from the Common Stock and all other series of Preferred Stock, to elect two (2) individuals (the “Series A/B Directors” and, together with the Series D Director and the Series C Directors, the “Preferred Directors”) to serve on the Board of Directors of the Corporation. So long as the holders of record of the shares of Series A Preferred Stock and Series B Preferred Stock shall have the right to elect a director pursuant to this subsection 3(d), any member of the Board of Directors elected pursuant to this subsection 3(d) may be removed at any time with or without cause by, and only by, the affirmative vote of a majority of the voting power of the then outstanding Series A Preferred Stock and Series B Preferred Stock, voting together as a single class. Any vacancy on the Board of Directors created by the resignation, removal, incapacity or death of any director elected pursuant to this subsection 3(d) shall only be filled by the holders of a majority of the Series A Preferred Stock and Series B Preferred Stock, voting together as a single class, or another individual elected pursuant to this subsection 3(d).

(e) Common Stockholder Director. The holders of record of the shares of Common Stock shall have the right, voting at a meeting of stockholders called for the purpose or by written consent, separately from the Preferred Stock, to elect one (1) individual to serve on the Board of Directors of the Corporation.

(f) Preferred Stock Director. The holders of record of the shares of Preferred Stock shall have the right, voting at a meeting of stockholders called for such purpose or by written consent, separately from the Common Stock, to elect one (1) individual to serve on the Board of Directors of the Corporation. So long as the holders of record of the shares of Preferred Stock shall have the right to elect a director pursuant to this subsection 3(f), any member of the Board of Directors elected pursuant to this subsection 3(f) may be removed at any time with or without cause by, and only by, the affirmative vote of the Super Majority Holders (as defined in the Note Purchase Agreement, by and between the Company and the investors listed on Schedule I thereto, dated on or about April 3, 2018). Any vacancy on the Board of Directors created by the resignation, removal, incapacity or death of any director elected pursuant to this subsection 3(f) shall only be filled by the Super Majority Holders or another individual elected pursuant to this subsection 3(f).

(g) Remaining Directors. All other directors of the Corporation shall be elected by the holders of the Common Stock and Preferred Stock voting together as a single class on an as-converted basis, with the holders of Preferred Stock to have that number of votes as is determined in accordance with subsection 3(a).

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

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Purchase Price (as defined below) by the applicable Conversion Price (as defined below) in effect at the time of conversion. The “Conversion Price” for (i) the Series D-1 Preferred Stock shall initially be equal to the Series D-1 Original Purchase Price; (ii) the Series D Preferred Stock shall initially be equal to the Series D Original Purchase Price; (iii) the Series C Preferred Stock shall initially be equal to the Series C Original Purchase Price; (iv) the Series B Preferred Stock shall initially be equal to the Series B Original Purchase Price and (v) the Series A Preferred Stock shall initially be equal to the Series A Original Purchase Price. Such Conversion Price, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. In the event of a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to the product of such fraction multiplied by the fair market value of a share of Common Stock, as mutually agreed by the Board of Directors of the Corporation and the holders of a majority of the Series D Preferred

Stock and Series D-1 Preferred Stock, voting together as a single class and the holders of a majority of the Series C Preferred Stock, voting separately as a single class; provided, however, that if such mutual agreement cannot be reached, such fair market value shall be determined by following the procedures set forth in the definition of Appraisal Procedure. The determination of fractional shares shall be based on the aggregate number of shares of Preferred Stock surrendered for conversion by any holder of Preferred Stock and not on the individual shares of Preferred Stock held by such holder.

(c) Mechanics of Conversion.

(i) Notice of Conversion. In order for a holder of Preferred Stock to convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock, at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date"). The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of Preferred Stock, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share. On the Conversion Date, each holder of record of shares of Preferred Stock surrendered for conversion shall be deemed to be the holder of record of the Common Stock issuable upon conversion of such Preferred Stock, notwithstanding that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

(ii) Reservation of Shares. The Corporation shall at all times when Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding 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, the Corporation shall 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 purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and

legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(iii) Effect of Conversion. All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and shall not be reissued, and the Corporation (without the need for stockholder action) may thereafter take such appropriate action as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

(iv) Taxes. The Corporation shall pay any and all issue, transfer, stamp and other taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Conversion Price for Diluting Issues:

(i) No Adjustment of Conversion Price. No adjustment pursuant to subsection 4(d)(iii) in the Conversion Price of the Preferred Stock shall be made (a) unless the consideration per share (determined pursuant to subsection 4(d)(iv) below) for Additional Shares of Common Stock (as defined below) issued or deemed to be issued by the Corporation is less than the applicable Conversion Price in effect on the date of, and immediately prior to, the issue of such Additional Shares, for such series of Preferred Stock or (b) if prior to or within sixty (60) days subsequent to such issuance, the Corporation receives written notice from the holders of a majority of the outstanding shares of such series of Preferred Stock, voting separately as a single class, agreeing that no such adjustment shall be made with respect to such series of Preferred Stock as the result of the issuance of Additional Shares of Common Stock.

(ii) Issue of Securities Deemed Issue of Additional Shares of Common Stock. If the Corporation at any time or from time to time after the Filing Date shall issue any Options or Convertible Securities (as such terms are defined below) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability, but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such

record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to subsection 4(d)(iv) below) of such Additional Shares of Common Stock would be less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) No further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) Upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(1) In the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

(2) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to subsection 4(d)(iv) below) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any Option or Convertible Security, including, but not limited to, a change resulting from the anti-dilution provisions thereof, the Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustment which was made upon the issuance of such Option or Convertible Security not exercised or converted prior to such change been made upon the basis of such change; and

(E) No readjustment pursuant to clause (B), (C) or (D) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(F) In the event the Corporation, after the Filing Date, amends any Options or Convertible Securities (whether such Options or Convertible Securities were outstanding on the Filing Date or were issued after the Filing Date) to increase the number of shares issuable thereunder or decrease the consideration to be paid upon exercise or conversion thereof, then such Options or Convertible Securities, as so amended, shall be deemed to have been issued after the Filing Date and the provisions of this subsection 4(d)(ii) shall apply.

(G) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price pursuant to the terms of subsection 4(d)(iii), the Conversion Price shall be readjusted to such Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(iii) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Filing Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to subsection 4(d)(ii) above, but excluding Excluded Issuances and shares issued as a stock split or combination as provided in subsection 4(e) below or upon a dividend or distribution as provided in Subsection 4(f) below), without consideration or for a consideration per share less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price shall be reduced, concurrently with such issue, to a price determined by multiplying such Conversion Price by a fraction, (A) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue (on an As-Converted Basis (as defined below)) plus (2) the number of shares of Common Stock which the aggregate consideration received or to be received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price; and (B) the denominator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue (on an As-Converted Basis) plus (2) the number of such Additional Shares of Common Stock so issued and/or deemed to be issued.

(iv) Determination of Consideration. For purposes of this Subsection 4(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

(1) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(2) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors, or if requested by the holders of a majority of the Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class and the holders of a majority of the Series C Preferred Stock, voting separately as a single class, by agreement of the Board of Directors and the holders of a majority of the Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class and the holders of a majority of the Series C Preferred Stock, voting separately as a single class, and if the Board of Directors and the holders of a majority of the Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class, and the holders of a majority of the Series C Preferred Stock, voting separately as a single class, do not agree on such fair market value, in accordance with the procedures set forth in the definition of Appraisal Procedure; and

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

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4(d)(ii) above, relating to Options and Convertible Securities, shall be determined by dividing

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

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

(e) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Filing Date effect a subdivision of the outstanding Common Stock, the applicable Conversion Price then in effect immediately before that subdivision shall be proportionately 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 in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Filing Date combine the outstanding shares of Common Stock, the applicable Conversion Price then in effect immediately before the combination shall be proportionately 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 the aggregate number of shares of Common Stock outstanding. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time, or from time to time, after the Filing Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock solely in additional shares of Common Stock, then and in each such event the Conversion Price for each series of Preferred Stock in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price for each series of Preferred Stock then in effect by a fraction:

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price for each series of Preferred Stock shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price for each series of Preferred Stock shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions; (b) that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of such Preferred Stock had been converted into Common Stock on the date of such event.

(g) Adjustment for Reclassification, Exchange or Substitution. If the Common Stock issuable upon the conversion of the Preferred Stock shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation, or sale of assets provided for below), then and in each such event the holder of each such share of Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable, upon such reorganization, reclassification, or other change, by holders of the number of shares of Common Stock into which such shares of Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(h) Adjustment for Merger or Reorganization, etc. In case of any consolidation or merger of the Corporation with or into another corporation or the sale of all or substantially all of the assets of the Corporation to another corporation, each share of Preferred Stock, if any, remaining outstanding after such consolidation, merger or sale shall thereafter be convertible (or shall be converted into a security which shall be convertible) into the kind and amount of shares of stock or other securities or cash or other property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Preferred Stock would have been entitled upon such consolidation, merger or sale; and, in such case, appropriate adjustment shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interest thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly equivalent a manner as may be practicable as before the consolidation or merger. If any event occurs of the type contemplated by the provisions of this Section 4 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Board of Directors of the Corporation shall make an appropriate reduction in the Conversion Price so as to protect the rights of the holders of the Preferred Stock.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than 10 days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable but in any event not later than 10 days thereafter, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of cash or other property which then would be received upon the conversion of such Preferred Stock.

(j) Notice of Record Date. In the event:

- (i) that the Corporation declares a dividend (or any other distribution) on its Common Stock payable in Common Stock or other securities of the Corporation;
- (ii) that the Corporation subdivides or combines its outstanding shares of Common Stock;
- (iii) of any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution thereon), or of any consolidation or merger of the Corporation into or with another corporation, or of the sale of all or substantially all of the assets of the Corporation; or
- (iv) of the involuntary or voluntary dissolution, liquidation or winding up of the Corporation;

then, and in each such case, the Corporation shall cause to be filed at its principal office or at the office of the transfer agent of the Preferred Stock, and shall cause to be mailed to the holders of Preferred Stock at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten days prior to the date specified in (A) below or twenty days before the date specified in (B) below, a notice stating the amount per share and character of such exchange applicable to the Preferred Stock and the Common Stock and specifying, as the case may be, either (A) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or (B) the date on which such reclassification, consolidation, merger, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution or winding up.

5. Mandatory Conversion.

(a) Trigger Events – General. Upon (i) the vote of the holders of a majority of the Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class and the vote of the holders of a majority of the Series C Preferred Stock, voting separately as a single class, or (ii) the closing of a Qualified Public Offering (as defined below), all outstanding shares of Preferred Stock shall be automatically converted into shares of Common Stock into which such Preferred Stock is convertible pursuant to Section 4 above and such shares of Preferred Stock may not be reissued by the Corporation.

(b) Trigger Event – Bridge Financing. If any Preferred Stockholder, together with its Affiliated Purchasers, does not purchase, on or before the Closing Deadline, its entire Pro Rata Share of the securities offered to such Preferred Stockholder in the Bridge Financing, then each share of each series of Preferred Stock then held by such Preferred Stockholder shall automatically, upon the Closing Deadline and without further action on the part of such Preferred Stockholder, be converted into one (1) fully paid and nonassessable shares of Common Stock; *provided, however,* that forgoing shall only apply so long as the Corporation has offered the

affected Preferred Stockholder the right to participate in the Bridge Financing, whether such participation right is pursuant to contract or otherwise, and subjects all Preferred Stockholders to this subsection 5(b) (the earlier of the events described in subsection 5(a), clause (i) or (ii), or this subsection 5(b), the “Mandatory Conversion Date”).

(c) Procedural Requirements. All holders of record of shares of Preferred Stock shall be given written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all such shares of Preferred Stock, pursuant to this Section 5. Such notice shall be sent to each record holder of Preferred Stock at such holder’s address last shown on the records of the transfer agent for the Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent). Upon receipt of such notice, each holder of shares of Preferred Stock shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. On the Mandatory Conversion Date, all rights with respect to the Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock) will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted, and payment of any accrued and/or declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in subsection 4(b) above in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and payment of any declared but unpaid dividends on the shares of Preferred Stock so converted. On the Mandatory Conversion Date, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon conversion of such Preferred Stock, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of such Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

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

6. Protective Covenants.

(a) At any time when at least 500,000 shares of Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Preferred Stock) are outstanding, the Corporation shall not, and shall not permit any Subsidiary (as defined below) to, either directly or indirectly by amendment of the Certificate of Incorporation of the Corporation, reclassification, merger, consolidation, reorganization or otherwise, do any of the following (in addition to any other vote required by law or the Certificate of Incorporation) without the prior written consent or affirmative vote of the holders of a majority of the outstanding shares of Preferred Stock, consenting or voting (as the case may be) together as a single class on an as-converted basis (or, in the case of items in clauses (ix), (xv), (xvi), (xvii) and (xviii) below, with the prior written consent of at least one of the Series C Directors and the Series D Director):

(i) alter, amend, repeal or waive any provisions of the Certificate of Incorporation or Bylaws of the Corporation in any manner that adversely affects the Preferred Stock or any series thereof;

(ii) alter or change the powers, preferences or special rights of the Preferred Stock or any series thereof so as to affect them adversely;

(iii) increase or decrease (other than by reduction of the authorized number of shares of Preferred Stock in accordance with Article IV(B)(4)(c)(iii) after conversion of Preferred Stock into Common Stock) the number of authorized shares of Preferred Stock as a class or any series thereof;

(iv) create or authorize the creation of, or issue or obligate itself to issue any other equity security convertible into or exercisable for any equity security having rights, preferences or privileges senior to, or in parity with, the Preferred Stock;

(v) authorize, declare or pay any dividend (other than dividends on Common Stock payable solely in Common Stock) on any share of the capital stock of the Corporation or any Subsidiary, prior to the payment of dividends on the Preferred Stock;

(vi) redeem, purchase or otherwise acquire for value any share or shares of the capital stock of the Corporation or any Subsidiary, except for repurchases of Common Stock of the Corporation from former employees or service providers in connection with the cessation of their employment or services, at the lower of fair market value or cost or other than as approved by the Board of Directors of the Corporation, including at least one of the Series C Directors and the Series D Director;

(vii) create or authorize the creation of, or issue or obligate itself to issue shares of, any Common Stock or other shares of capital stock of the Corporation or securities directly or indirectly exercisable for or convertible into Common Stock or other capital stock of the Corporation (excluding (1) any shares of Series D-1 Preferred Stock issued pursuant to the Merger Agreement; (2) up to 8,520,225 shares of Common Stock, in the aggregate, issued pursuant to the Stock Option Plan (as defined below) or Options issued thereunder; and (3)

Common Stock issuable on the exercise of Options and convertible securities outstanding on the Filing Date);

(viii) create, or authorize the creation of, or issue, or authorize the issuance of, any debt or debt security which is convertible into Common Stock or other capital stock of the Corporation;

(ix) create any new option pool or any increase in the number of shares reserved for grant under the Stock Option Plan or any other option plan;

(x) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any event specified in Subsection 2(e) or consent to any of the foregoing;

(xi) sell, transfer or dispose of more than twenty-five percent (25%) of the fair market value of the Corporation's consolidated assets in any transaction or series of related transactions (other than the sale of inventory, and other sales, in the ordinary course of business);

(xii) license or transfer all or any portion of the intellectual property rights of the Corporation (other than licenses and transfers in the ordinary course of business);

(xiii) enter into or incur any debt or lease obligation (other than working capital loans, equipment lease obligations and other similar obligations in the ordinary course of business);

(xiv) permit the authorized number of directors on the Board of Directors of the Corporation to be other than eight (8);

(xv) enter into or amend any transaction with Senior Management (as defined below) or an Affiliate of the Corporation, except for arms' length employment agreements;

(xvi) adopt any material alteration in the Corporation's business plan;

(xvii) adopt or materially alter the Corporation's budget;

(xviii) hire, terminate, replace or reassign any members of Senior Management of the Corporation;

(xix) create any Subsidiaries other than a Subsidiary in which the Corporation or a Subsidiary of the Corporation is the sole record and beneficial holder of all the equity interests;

(xx) acquire any other Person, business or all or substantially all of the assets of any other Person or make an investment in any other Person; or

(xxi) merge with or into or consolidate with any other corporation, whether or not the Corporation or a Subsidiary is the surviving corporation.

(b) At any time when any shares of the Series D-1 Preferred Stock are outstanding, the consent of the holders of at least a majority of the outstanding shares of the Series D-1 Preferred Stock shall be necessary for authorizing, effecting or validating any action which adversely alters or changes the rights, preferences or privileges of the Series D-1 Preferred Stock in a manner disproportionate to the other series of Preferred Stock, or increases the authorized number of shares of the Series D-1 Preferred Stock.

(c) At any time when any shares of the Series D Preferred Stock are outstanding, the consent of the holders of at least a majority of the outstanding shares of the Series D Preferred Stock shall be necessary for authorizing, effecting or validating any action which adversely alters or changes the rights, preferences or privileges of the Series D Preferred Stock in a manner disproportionate to the other series of Preferred Stock, or increases the authorized number of shares of the Series D Preferred Stock.

(d) At any time when any shares of the Series C Preferred Stock are outstanding, the consent of the holders of at least a majority of the outstanding shares of the Series C Preferred Stock shall be necessary for authorizing, effecting or validating any action which adversely alters or changes the rights, preferences or privileges of the Series C Preferred Stock in a manner disproportionate to the other series of Preferred Stock, or increases the authorized number of shares of the Series C Preferred Stock.

7. Waiver. Except as otherwise required by law or this Amended and Restated Certificate of Incorporation, without creating any additional consent rights not otherwise provided herein, (a) the holders of a majority of the Series D-1 Preferred Stock may waive, by delivery of written notice to the Corporation, any of the rights, preferences or privileges relating to the Series D-1 Preferred Stock hereunder, either prospectively or retrospectively, (b) the holders of a majority of the Series D Preferred Stock may waive, by delivery of written notice to the Corporation, any of the rights, preferences or privileges relating to the Series D Preferred Stock hereunder, either prospectively or retrospectively, (c) the holders of a majority of the Series C Preferred Stock may waive, by delivery of written notice to the Corporation, any of the rights, preferences or privileges relating to the Series C Preferred Stock hereunder, either prospectively or retrospectively and (d) the holders of a majority of the Series B Preferred Stock and Series A Preferred Stock, voting together as a single class, may waive, by delivery of written notice to the Corporation, any of the rights, preferences or privileges relating to the Series B Preferred Stock and Series A Preferred Stock hereunder, either prospectively or retrospectively.

8. Redemption.

(a) At any time on or after August 1, 2019, the holders of a majority of the outstanding shares of the Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class, may require the Corporation, to the extent it may lawfully do so, to redeem all of the outstanding shares of the Series D Preferred Stock and Series D-1 Preferred Stock (the “Series D Redemption Request”). The Corporation shall effect such redemption in three (3) annual installments commencing on the date designated in such Series D Redemption Request, to be no sooner than sixty (60) days following the delivery of such Series D Redemption Request (the date designated in the Series D Redemption Request and each anniversary thereof, a “Series D Mandatory Redemption Date”). Each holder of Series D

Preferred Stock or Series D-1 Preferred Stock, as applicable, may elect to withdraw a Series D Redemption Request with respect to all or a portion of such holder's shares of Series D Preferred Stock or Series D-1 Preferred Stock, as applicable, to be redeemed on a Series D Mandatory Redemption Date by giving the Corporation written notice of such holder's decision to withdraw from such redemption at least fifteen (15) days prior to the applicable Series D Mandatory Redemption Date.

(b) At any time on or after August 1, 2019, the holders of a majority of the outstanding shares of the Series C Preferred Stock, voting separately as a single class, may require the Corporation, to the extent it may lawfully do so, to redeem all of the outstanding shares of the Series C Preferred Stock (the "Series C Redemption Request"). The Corporation shall effect such redemption in three (3) annual installments commencing on the date designated in such Series C Redemption Request, to be no sooner than sixty (60) days following the delivery of such Series C Redemption Request (the date designated in the Series C Redemption Request and each anniversary thereof, a "Series C Mandatory Redemption Date"). Each holder of Series C Preferred Stock may elect to withdraw a Series C Redemption Request with respect to all or a portion of such holder's shares of Series C Preferred Stock to be redeemed on a Series C Mandatory Redemption Date by giving the Corporation written notice of such holder's decision to withdraw from such redemption at least fifteen (15) days prior to the applicable Series C Mandatory Redemption Date. Notwithstanding the foregoing, the Corporation shall not effect a redemption of any shares of the Series C Preferred Stock unless the Corporation simultaneously redeems pursuant to Section 8(a), the then-outstanding shares of the Series D Preferred Stock and Series D-1 Preferred Stock; provided, however, that this restriction may be waived by the holders of not less than a majority of the then-outstanding Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class.

(c) At any time on or after August 1, 2019, the holders of a majority of the outstanding shares of the Series A Preferred Stock and Series B Preferred Stock, voting together as a single class, may require the Corporation, to the extent it may lawfully do so, to redeem all of the outstanding shares of the Series A Preferred Stock and Series B Preferred Stock (the "Series A/B Redemption Request", and together with the Series C Redemption Request and the Series D Redemption Request, and each of them, a "Redemption Request"). The Corporation shall effect such redemption in three (3) annual installments commencing on the date designated in such Series A/B Redemption Request, to be no sooner than sixty (60) days following the delivery of such Series A/B Redemption Request (the date designated in the Series A/B Redemption Request and each anniversary thereof, a "Series A/B Mandatory Redemption Date", and together with the Series C Mandatory Redemption Date and the Series D Mandatory Redemption Date, and each of them separately, a "Mandatory Redemption Date"). Each holder of Series A Preferred Stock or Series B Preferred Stock may elect to withdraw a Series A/B Redemption Request with respect to all or a portion of such holder's shares of Series A Preferred Stock or Series B Preferred Stock to be redeemed on a Series A/B Mandatory Redemption Date by giving the Corporation written notice of such holder's decision to withdraw from such redemption at least fifteen (15) days prior to the applicable Series A/B Mandatory Redemption Date. Notwithstanding the foregoing, the Corporation shall not effect a redemption of any shares of the Series A Preferred Stock or Series B Preferred Stock unless the Corporation simultaneously redeems pursuant to Section 8(b), the then-outstanding shares of the Series C Preferred Stock and redeems pursuant to Section 8(a), the then-outstanding shares of the Series

D Preferred Stock and Series D-1 Preferred Stock; provided, however, that this restriction may be waived by the holders of not less than a majority of the then-outstanding Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class, with respect to the Series D Preferred Stock and Series D-1 Preferred Stock, and the holders of not less than a majority of the then-outstanding Series C Preferred Stock, voting separately as a single class, with respect to the Series C Preferred Stock.

(d) Each share of Preferred Stock to be redeemed on a Mandatory Redemption Date shall be redeemed at a price per share of Preferred Stock for each series of Preferred Stock (each a "Mandatory Redemption Price") equal to the applicable Original Purchase Price plus an amount equal to all accrued and/or declared and unpaid dividends on the Preferred Stock. The Corporation shall redeem one-third of the outstanding shares of Preferred Stock to be redeemed on the Mandatory Redemption Date set forth in the Redemption Request, one-half of the remaining outstanding shares of Preferred Stock to be redeemed on the first anniversary thereof and all of the remaining shares of Preferred Stock to be redeemed on the second anniversary thereof.

(e) The Corporation shall provide written notice of the Redemption Request, specifying (i) the time and place of such redemption, (ii) the number of shares of each series of Preferred Stock held by the holder that the Corporation shall redeem on the Mandatory Redemption Date, (iii) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Preferred Stock to be redeemed and (iv) the applicable Mandatory Redemption Price (the "Mandatory Redemption Price"), by first class or registered mail, postage prepaid, to each holder of record of Preferred Stock at the address for such holder last shown on the records of the transfer agent therefor (or the records of the Corporation, if it serves as its own transfer agent), prior to each Mandatory Redemption Date. The Corporation shall use its best efforts and shall take all reasonable action necessary to pay the Mandatory Redemption Price as provided in this Section 8, including obtaining financing or effectuating a recapitalization so as to create a surplus.

(f) Insufficient Funds. If the funds of the Corporation legally available for redemption of the Preferred Stock on any Mandatory Redemption Date are insufficient to redeem the full number of shares of the Preferred Stock required under this Section 8 to be redeemed on such date, those funds which are legally available will be used first to redeem the maximum possible number of shares of the Series D Preferred Stock and Series D-1 Preferred Stock being redeemed to the extent possible (pro rata among the holders of the Series D Preferred Stock and Series D-1 Preferred Stock in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such redemption if all amounts payable on or with respect to such shares were paid in full), then to redeem the maximum number of shares of the Series C Preferred Stock being redeemed to the extent possible (pro rata among the holders of the Series C Preferred Stock in accordance with the number of shares of Series C Preferred Stock held by such holders), then to redeem the maximum possible number of shares of the Series A Preferred Stock and Series B Preferred Stock being redeemed to the extent possible (pro rata among the holders of the Series A Preferred Stock and Series B Preferred Stock in accordance with the number of shares of Series A Preferred Stock and Series B Preferred Stock held by such holders). At any time thereafter when additional funds of the Corporation become legally available for the redemption of the Preferred Stock, such funds will be used to redeem the

balance of the shares of Preferred Stock which the Corporation was theretofore obligated to redeem as provided in the immediately preceding sentence. Any shares of Preferred Stock which are not redeemed as a result of the circumstances described in this subsection 8(f) shall remain outstanding and entitled to all rights and preferences provided herein until such shares shall have been redeemed and the Mandatory Redemption Price therefor, as applicable, shall have been paid or set aside for payment in full. In the event that less than all of the shares of Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of the applicable Preferred Stock shall promptly be issued to such holder upon such holder's request.

(g) Rights Terminated. Upon (i) presentation and surrender of the certificate or certificates representing the shares of Preferred Stock being redeemed on a Mandatory Redemption Date pursuant to this Section 8 and receipt of the Mandatory Redemption Price for such shares of Preferred Stock, or (ii) irrevocable deposit in trust by the Corporation for the holders of the Preferred Stock being redeemed on a Mandatory Redemption Date pursuant to this Section 8 of an amount equal to the Mandatory Redemption Price for the shares of Preferred Stock being redeemed on such Mandatory Redemption Date, each holder of Preferred Stock will cease to have any rights as a stockholder of the Corporation by reason of the ownership of such redeemed shares of Preferred Stock (except for the right to receive the Mandatory Redemption Price therefor upon the surrender of the certificate or certificates representing the redeemed shares if such certificate or certificates have not been surrendered), and such redeemed shares of Preferred Stock will not from and after the date of payment in full of the Mandatory Redemption Price therefor be deemed to be outstanding.

(h) Restrictions on Other Payments. After the receipt by the Corporation of a Redemption Request, unless and until the full Mandatory Redemption Price for the shares of Preferred Stock to be redeemed on any Mandatory Redemption Date has been paid to the holders requesting such redemption, (i) no dividends shall be paid or declared or set aside for payment or other distribution upon any capital stock of the Corporation (other than solely in shares of Common Stock for which adjustment may be made pursuant to Section 4 above), and (ii) no shares of capital stock of the Corporation shall be redeemed, retired, purchased or otherwise acquired for any consideration (or any payment made to or available for a sinking fund for the redemption of any such shares) by the Corporation or any Subsidiary (except (y) by conversion into or exchange for shares of Common Stock for which adjustment may be made pursuant to Section 4 above or (z) repurchases of Common Stock of the Corporation from current or former employees or service providers at a price no greater than the original purchase price for such shares, provided that such repurchase pursuant to clause (z) has been approved by the holders of a majority of the Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class, and the holders of a majority of the Series C Preferred Stock, voting separately as a single class).

(i) Reacquired Shares. Any shares of Preferred Stock converted, redeemed, purchased, or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof, and shall not be reissued and the Corporation from time to time shall take such action as may be necessary to reduce the authorized Preferred Stock accordingly.

9. **Definitions.** The following terms shall have the following respective meanings:

“Additional Shares of Common Stock” shall mean all shares of Common Stock issued (or, pursuant to subsection 4(d)(ii) above, deemed to be issued) by the Corporation after the Filing Date, other than:

- (a) shares of Common Stock issued or issuable by reason of a dividend or other distribution on shares of Common Stock that is covered by subsection 4(e) or 4(f) above;
 - (b) shares of Common Stock issued or issuable upon conversion of shares of Preferred Stock;
 - (c) shares of Common Stock issued upon exercise of any Option outstanding on the Filing Date;
 - (d) 8,520,225 shares of Common Stock, either issued in the form of restricted stock awards or options exercisable for Common Stock (subject to appropriate adjustment for stock splits, stock dividends, combinations and other similar recapitalizations affecting such shares), issued or issuable to officers, directors, consultants and employees of the Corporation pursuant to the Stock Option Plan or any other plan, agreement or arrangement approved by the Board of Directors of the Corporation, including at least one of the Series C Directors, and the Series D Director;
 - (e) shares of Common Stock issued (i) for consideration other than cash in connection with any technology license, business combination, strategic partnership or joint venture transactions (other than transactions entered into primarily for equity financing purposes) or (ii) in connection with any permitted acquisitions or mergers, in each case that have been approved by the Board of Directors;
 - (f) shares of Common Stock issued pursuant to a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended and after which the Common Stock is listed on the New York Stock Exchange, the NASDAQ Global Market, the NASDAQ Global Select Market or an equivalent global market;
 - (g) shares of Common Stock issued in any stock split, stock dividend or recapitalization by the Corporation; or
 - (h) shares of Common Stock issued or issuable to banks or equipment lessors pursuant to a debt financing, equipment leasing or real property leasing transaction that are approved by the Board of Directors, including at least one Preferred Director;
- each of the above issuances, an “Excluded Issuance” and collectively, the “Excluded Issuances”.

“Affiliated Purchaser” shall mean, with respect to each Preferred Stockholder, any Holder Affiliate of such Preferred Stockholder that is purchasing securities of the Corporation and that designates in writing delivered to the Corporation on or before the closing of the sale

and issuance of the securities being purchased by such Affiliated Purchase that such securities shall be applied to such Preferred Stockholder's Pro Rata Share (provided that no securities shall be attributed to more than one Preferred Stockholder's Pro Rata Share, including the Affiliated Purchaser's Pro Rata Share if such Affiliated Purchase is a Preferred Stockholder).

"Affiliate" shall mean, with respect to any Person (as defined herein), any (x) director, officer or stockholder holding 10% or more of the capital stock (on a fully diluted basis) of such Person, (y) spouse, parent, sibling or descendant of such Person (or a spouse, parent, sibling or descendant of a director, officer, or partner of such Person) and (z) other Persons that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, another Person. The term "control" includes, without limitation, the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. With respect to Bain Capital, the term Affiliate shall be deemed to also include any Person under common management with Bain Capital.

"Appraisal Procedure" shall mean the following procedure to determine fair market value of any security or other property (in either case, the "valuation amount"). If the holders of a majority of the outstanding shares of Series C Preferred Stock voting separately as a single class, and the holders of a majority of the outstanding shares of the Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class, and the Board of Directors are not able to agree on the valuation amount within a reasonable period of time (not to exceed twenty (20) days), the valuation amount shall be determined by an investment banking firm of national recognition, which firm shall be unaffiliated with each of the Corporation and any holder of the Preferred Stock and shall be reasonably acceptable to the Board of Directors and the holders of a majority of the outstanding shares of Series C Preferred Stock voting separately as a single class, and the holders of a majority of the outstanding shares of the Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class. If the Board of Directors and the holders of a majority of the outstanding shares of Series C Preferred Stock voting separately as a single class, and the holders of a majority of the outstanding shares of the Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class, are unable to agree upon an acceptable investment banking firm within ten (10) days after the date either party proposed that one be selected, the investment banking firm will be selected by an arbitrator selected by the American Arbitration Association (or if such organization ceases to exist, the arbitrator shall be chosen by a court of competent jurisdiction). The arbitrator shall select the investment banking firm (within ten (10) days of his appointment) from a list, jointly prepared by the holders of a majority of the outstanding shares of Series C Preferred Stock voting separately as a single class and the holders of a majority of the outstanding shares of Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class, and the Board of Directors, of not more than six investment banking firms of national standing in the United States, of which no more than three may be named by the Board of Directors and no more than three may be named by the holders of a majority of the outstanding shares of Series C Preferred Stock voting separately as a single class and the holders of a majority of the Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class. The arbitrator may consider, within the ten-day period allotted, arguments from the parties regarding which investment banking firm to choose, but the selection by the arbitrator shall be made in its sole discretion from the list of six. The Board of Directors and the holders of a majority of the outstanding shares of Series C

Preferred Stock voting separately as a single class and the holders of a majority of the Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class, shall submit their respective valuations and other relevant data to the investment banking firm, and the investment banking firm shall as soon as practicable thereafter make its own determination of the valuation amount. The final valuation amount for purposes hereof shall be the average of the two valuation amounts closest together, as determined by the investment banking firm, from among the valuation amounts submitted by the Corporation and holders of a majority of the outstanding shares of Series C Preferred Stock voting separately as a single class and the holders of a majority of the outstanding shares of the Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class, and the valuation amount calculated by the investment banking firm. The determination of the final valuation amount by such investment banking firm shall be final and binding upon the parties. The Corporation shall pay the fees and expenses of the investment banking firm and arbitrator (if any) used to determine the valuation amount. If the valuation amount is for Common Stock of the Corporation, the valuation amount shall not include a discount for minority ownership or illiquidity or a control premium.

“As-Converted Basis” shall mean, for the purpose of determining the number of shares of Common Stock outstanding, a basis of calculation which takes into account (a) the number of shares of Common Stock actually issued and outstanding at the time of such determination, and (b) the number of shares of Common Stock that are then issuable upon the exercise or conversion of all outstanding securities or rights convertible into or exercisable for Common Stock, including without limitation, the Preferred Stock and outstanding stock options and warrants for the purchase of any shares of Common Stock or Preferred Stock.

“Bain Capital” shall include Bain Capital Venture Fund 2009, L.P., BCIP Venture Associates, and BCIP Venture Associates-B, together with their respective Affiliates.

“Bridge Financing” shall mean the Corporation’s sale and issuance of subordinated convertible notes pursuant to a definitive note purchase agreement dated on or about April 3, 2018.

“Closing Deadline” shall mean the last date by which Preferred Stockholders must purchase his, her or its Pro Rata Share of the securities offered in the Bridge Financing as set forth in the definitive note purchase agreement with respect to such Bridge Financing.

“Common Stockholders” means the holders of the then outstanding shares of Common Stock.

“Conversion Price” is defined in subsection 4(a) above.

“Convertible Securities” shall mean any evidences of indebtedness, shares (other than Common Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

“Filing Date” shall mean the date of the filing of this Amended and Restated Certificate of Incorporation.

“Fully Diluted Equity” shall mean the number of shares of Common Stock of the Corporation actually issued and outstanding at the time of such determination plus the number of shares of Common Stock of the Corporation that is then issuable upon conversion of all then outstanding shares of Preferred Stock.

“Holder Affiliate” shall mean, with respect to any Preferred Stockholder, any Person who, directly or indirectly, controls, is controlled by, or is under common control with such Preferred Stockholder, including, without limitation, any general partner, managing member, officer or director of such Preferred Stockholder or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Preferred Stockholder.

“Mandatory Redemption Price” has the meaning set forth in Section 8 above.

“Merger Agreement” shall mean that certain Agreement and Plan of Reorganization between the Parent, Riptide Acquisition Corp., ReadyPulse, Inc., and Stockholder Representative (as defined therein), dated on or about April 4, 2016.

“Option” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

“Person” shall mean without limitation an individual, a partnership, a corporation, an association, a joint stock corporation, a limited liability company, a trust, a joint venture, an unincorporated organization and a governmental authority.

“Preferred Stockholder” shall mean any holder of Preferred Stock.

“Pro Rata Share” shall mean, with respect to each Preferred Stockholder, that portion of the aggregate principal amount of the subordinated convertible notes offered by the Corporation in the Bridge Financing (the “Bridge Notes”) which equals (A) the aggregate principal amount of the Bridge Notes multiplied by (B) a fraction equal to (x) the number of shares of Preferred Stock then held by such Preferred Stockholder (with all shares of Preferred Stock being treated as if they had been converted to shares of Common Stock at the then applicable Conversion Rate for such series of Preferred Stock), divided by (y) the total number of shares of Preferred Stock then held by all Preferred Stockholders (with all shares of Preferred Stock being treated as if they had been converted to shares of Common Stock at the then applicable Conversion Rate for such series of Preferred Stock).

“Qualified Public Offering” shall mean the sale of shares of Common Stock, at a price of at least three hundred percent (300%) of the Series D Original Purchase Price (subject to appropriate adjustment for stock splits, stock dividends, combinations and other similar recapitalizations affecting the Common Stock), in a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least Fifty Million Dollars (\$50,000,000) of proceeds to the Corporation (net of the underwriting discounts or commissions and offering expenses) and after which the Common Stock is listed on the New York Stock Exchange, the NASDAQ Global Market, the NASDAQ Global Select Market or an equivalent global market.

“Senior Management” shall mean the principal executive officer, the principal financial officer, any other officer reporting to the Board of Directors and any officer reporting to the principal executive officer.

“Series A Original Purchase Price” shall be \$0.40 per share of Series A Preferred Stock, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock.

“Series B Original Purchase Price” shall be the purchase price at which each share of Series B Preferred Stock was originally issued, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock.

“Series C Original Purchase Price” shall be \$1.74417185 per share of Series C Preferred Stock, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Preferred Stock.

“Series D Original Purchase Price” shall be \$3.27374825 per share of Series D Preferred Stock, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series D Preferred Stock.

“Series D-1 Original Purchase Price” shall be \$4.52533661 per share of Series D-1 Preferred Stock, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series D-1 Preferred Stock.

“Stock Option Plan” shall mean the Corporation’s 2005 Stock Option Plan, as amended from time to time.

“Subsidiary” shall mean any corporation or trust of which the Corporation directly or indirectly owns at the time 50% or more of the outstanding shares that represent either 50% or more of the voting power, 50% or more of the economic power, or control of the board of directors of such corporation or trust, other than directors’ qualifying shares.

FIFTH. The Corporation is to have perpetual existence.

SIXTH. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

A. The Board of Directors of the Corporation is expressly authorized to adopt, amend, or repeal the Bylaws of the Corporation, subject to any right of the stockholders set forth herein, including, without limitation, the right of the stockholders entitled to vote with respect thereto to alter and repeal the Bylaws made by the Board of Directors.

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

C. Meetings of the 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 at such place within or without the State of Delaware as the Bylaws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

SEVENTH. Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholders thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of the DGCL or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of DGCL, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all stockholders or class of stockholders of the Corporation, as the case may be, and also on the Corporation.

EIGHTH. To the maximum extent permitted from time to time under the law of the State of Delaware, the Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to its officers, directors or stockholders, other than those officers, directors or stockholders who are employees of the Corporation. No amendment or repeal of this Article EIGHTH shall apply to or have any effect on the liability or alleged liability of any officer, director or stockholder of the Corporation for or with respect to any opportunities of which such officer, director, or stockholder becomes aware prior to such amendment or repeal.

NINTH. A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that exculpation from liability is not permitted under the DGCL as in effect at the time such liability is determined. No amendment or repeal of this Article NINTH shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

TENTH. The Corporation shall, to the maximum extent permitted from time to time under the law of the State of Delaware, indemnify and upon request shall advance expenses to any person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or claim, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was or has agreed to be a director or officer of the Corporation or while a director or officer is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of any corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorney's fees and expenses), judgments, fines, penalties and amounts paid in settlement incurred in connection with the investigation,

preparation to defend or defense of such action, suit, proceeding or claim; provided, however, that the foregoing shall not require the Corporation to indemnify or advance expenses to any person in connection with any action, suit, proceeding or claim initiated by or on behalf of such person or any counterclaim against the Corporation initiated by or on behalf of such person. Such indemnification shall not be exclusive of other indemnification rights arising under any by-law, agreement, vote of directors or stockholders or otherwise and shall inure to the benefit of the heirs and legal representatives of such person. Any person seeking indemnification under this Article TENTH shall be deemed to have met the standard of conduct required for such indemnification unless the contrary shall be established. Directors and officers of the Corporation may have certain rights to indemnification and/or insurance other than the indemnification provided by the Corporation and all such indemnification and/or insurance is intended to be secondary to the primary obligation of the Corporation to indemnify such director or officer pursuant to this Article TENTH. Any repeal or modification of the foregoing provisions of this Article TENTH shall not adversely affect any right or protection of a director or officer of the Corporation with respect to any acts or omissions of such director or officer occurring prior to such repeal or modification.

ELEVENTH. If at any time the Corporation shall have a class of stock registered pursuant to the provisions of the Securities Exchange Act of 1934, for so long as such class is so registered, any action by the stockholders of such class must be taken at an annual or special meeting of stockholders and may not be taken by written consent.

TWELFTH: The Corporation hereby elects not to be governed by Section 203 of the DGCL.

THIRTEENTH. Notwithstanding any provision of law, the Corporation may, by contract, grant to some or all of the security holders of the Corporation preemptive rights to acquire stock of the Corporation, but no stockholders shall have any preemptive rights except as specifically granted.

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

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by a duly authorized officer of the Corporation this 2nd day of April, 2018.

EXPERTVOICE, INC.

By: 
Name: Thomas G. Stockham
Title: Chief Executive Officer