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October 15, 2013

OCT 15 2013

**Katherine E. Barker Marshall**

VIA FEDEX

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Senior Attorney  
202.857.6104 DIRECT  
202.857.6395 FAX  
marshall.katherine@arentfox.com

Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
Second Floor - Room N201  
Harrisburg, PA 17120

Re: Amendment to the Application of CallFire, Inc. to Provide Competitive Local Exchange Service and Interexchange Service within the Commonwealth of Pennsylvania

Dear Ms. Chiavetta :

Enclosed please find, for filing, one original and three (3) copies of the Amendment to the above-captioned Application, as per the request of the Commission in a letter dated September 27, 2013.

The Commission is correct that the Applicant's registered office provider is CT Corporation System of Dauphin County.

Also included with this filing is a Certificate of Service, affirming that CallFire has contacted all of the applicable 911 coordinators in its proposed service area, in addition to a Certificate of Service that CallFire has served a copy of the public version of its Application on the incumbent carriers in its proposed service area, as well as the Commission-required contacts.

This filing includes two (2) tariffs, the first of which is Applicant's proposed Switched Access Tariff, numbered Pa. PUC Telephone Tariff No. 2, and a new version of Applicant's proposed Competitive Local Exchange Tariff, numbered Pa. PUC Telephone Tariff No. 1.

Please date stamp the duplicate of this filing and return in the self-addressed, postage prepaid envelope. Thank you for your anticipated cooperation in this matter and please do not hesitate to contact me if you have any questions or concerns.

AFDOCS/10428059.1

Respectfully submitted,

A handwritten signature in black ink that reads "Katherine E. Barker Marshall". The signature is written in a cursive style with a large initial 'K'.

Katherine E. Barker Marshall

Attachment

cc: Service List

September 13, 2013

VIA FEDEX

Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
Second Floor - Room N201  
Harrisburg, PA 17120

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SEP 13 2013

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Katherine E. Barker Marshall**

Attorney  
202.857.6104 DIRECT  
202.857.6395 FAX  
marshall.katherine@arentfox.com

Re: Application of CallFire, Inc. to Provide Competitive Local Exchange Service and Interexchange Service within the Commonwealth of Pennsylvania

Dear Ms. Chiavetta :

Enclosed please find, for filing, one original and three (3) copies of the above-captioned Application, as well as a check in the amount of \$250.00 to cover the requisite filing fee.

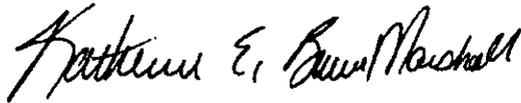
Please note that **Exhibit D** contains confidential and proprietary financial information about the Applicant. CallFire, Inc. ("CallFire") is a privately-held company, and therefore is not required to make public disclosures of its financial information. Such disclosure could harm CallFire by giving its competitors insight to its funding, as well as its future strategic planning. Accordingly, CallFire respectfully requests that **Exhibit D** be filed under seal. A Motion for Confidential Treatment, pursuant to 52 Pa. Code §5.423 of **Exhibit D** is included with this filing.

Also included with this filing is a Certificate of Service, affirming that CallFire has contacted all of the applicable 911 coordinators in its proposed service area, in addition to a Certificate of Service that CallFire has served a copy of the public version of its Application on the incumbent carriers in its proposed service area, as well as the Commission-required contacts.

Please date stamp the duplicate of this filing and return in the self-addressed, postage prepaid envelope. Thank you for your anticipated cooperation in this matter and please do not hesitate to contact me if you have any questions or concerns.

RPP/616447.1

Respectfully submitted,

A handwritten signature in black ink that reads "Katherine E. Barker Marshall". The signature is written in a cursive style with a large initial 'K'.

Katherine E. Barker Marshall

Attachment

cc: Service List

**Application of:**

**CallFire, Inc.**

for approval to offer, render, furnish or supply telecommunications services to the public in the Commonwealth of Pennsylvania.

**1. IDENTITY OF THE APPLICANT:** The name, address, telephone number, and fax number of the Applicant.

**CallFire, Inc.  
1335 4th Street  
Santa Monica, CA 90401  
Telephone: 877.897.3473  
Facsimile: (310) 943-0415**

Please identify any predecessors of the Applicant and provide other names under which the Applicant has operated within the preceding five years, including name, address, and telephone number.

**Not Applicable**

**2. ATTORNEY:** The name, address, telephone number, and fax number of the Applicant's attorney.

**Michael B. Hazzard  
Katherine Barker Marshall  
Arent Fox LLP  
1717 K Street NW NW  
Washington, DC 20036  
Telephone: (202) 857-6104  
Facsimile: (202) 857-6395**

**3. CONTACTS:**

**A) APPLICATION:** The name, title, address, telephone number, and fax number of the person to whom questions about this application should be addressed.

**Katherine Barker Marshall  
Arent Fox LLP**

**1717 K Street NW  
Washington, DC 20036  
Telephone: (202) 857-6104  
Facsimile: (202) 857-6395**

**B) PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY (PEMA):** The name, title, address, telephone number and FAX number of the person with whom contact should be made by PEMA (Pennsylvania Emergency Management Agency).

**Jagannathan "TJ" Thinakaran  
CallFire, Inc.  
1335 4th Street  
Santa Monica, CA 90401  
Telephone: (213) 221-2208  
Facsimile: (310) 943-0415  
E-mail: [tj@callfire.com](mailto:tj@callfire.com)**

**C) RESOLVING COMPLAINTS:** Name, address, telephone number, and FAX number of the person and an alternate person responsible for addressing customer complaints. These persons will ordinarily be the initial point(s) of contact for resolving complaints and queries filed with the Public Utility Commission or other agencies.

**Jagannathan "TJ" Thinakaran  
CallFire, Inc.  
1335 4th Street  
Santa Monica, CA 90401  
Telephone: (213) 221-2208  
Facsimile: (310) 943-0415  
E-mail: [tj@callfire.com](mailto:tj@callfire.com)**

**4. FICTITIOUS NAME:**

- The Applicant will not be using a fictitious name.
- The Applicant will be using a fictitious name. Attach to the Application a copy of the Applicant's filing with the Commonwealth's Department of State pursuant to 54 Pa. C.S. §311, Form PA-953.

**5. BUSINESS ENTITY AND DEPARTMENT OF STATE FILINGS:**

- The Applicant is a sole proprietor.
- The Applicant is a:
- General partnership
  - Domestic limited partnership (15 Pa. C.S. §8511)

- \*Foreign limited partnership (15 Pa. C.S. §8582)
- Domestic registered limited liability partnership (15 Pa. C.S. §8201)
- \*Foreign registered limited liability general partnership (15 Pa. C.S. §8211)

\*Provide name and address of Corporate Registered Office Provider or Registered Office within PA.

Attach to the application the name and address of partners. If any partner is not an individual, identify the business nature of the partner entity and identify its partners or officers.

**Attach to the application proof of compliance with appropriate Department of State filing requirements as indicated above.**

**5. (Continued)**

- The Applicant is a:
  - Domestic corporation (15 Pa. C.S. §1306)
  - X \*Foreign corporation (15 Pa. C.S. §4124)
  - Domestic limited liability company (15 Pa. C.S. §8913)
  - \*Foreign limited liability company (15 Pa. C.S. §8981)

\*Provide name and address of Corporate Registered Office Provider or Registered Office within PA.

**Attach proof of compliance with appropriate Department of State filing requirements as indicated above. Additionally, provide a copy of the Applicant's Articles of Incorporation or a Certificate of Organization.**

**Please see *Exhibit A*.**

**The Applicant is incorporated in the State of Delaware.**

Give name and address of officers:

**Dinesh Ravishanker  
Chief Executive Officer**

**Vijesh Mehta  
Chief Technology Officer**

**Punit Shah  
Chief Information Officer**

**Jagannathan "TJ" Thinakaran  
Chief Operating Officer**

**Komnieve Singh  
President**

**Ronald Burr  
Chief Revenue Officer**

**Biographies of these officers can be found at *Exhibit B*.**

All officers can be reached at the Applicant's headquarters:

**1335 4th Street, Santa Monica, CA 90401.**

**6. AFFILIATES AND PREDECESSORS WITHIN PENNSYLVANIA:**

- The Applicant has no affiliates doing business in Pennsylvania or predecessors which have done business in Pennsylvania.
- The Applicant has affiliates doing business in Pennsylvania or predecessors which have done business in Pennsylvania. Name and address of the affiliates. State whether they are jurisdictional public utilities. Give docket numbers for the authority of such affiliates.

If the Applicant or an affiliate has predecessors who have done business within Pennsylvania, give name and address of the predecessors and state whether they were jurisdictional public utilities. Give the docket numbers for the authority of such predecessors.

**7. AFFILIATES AND PREDECESSORS RENDERING PUBLIC UTILITY SERVICE OUTSIDE PENNSYLVANIA:**

- The Applicant has no affiliates rendering or predecessors which rendered public utility service outside Pennsylvania.

The Applicant has affiliates rendering or predecessors which rendered public utility service outside Pennsylvania. Name and address of the affiliates and predecessors (please identify affiliates versus predecessors).

**8. APPLICANT'S PRESENT OPERATIONS: (Select and complete the appropriate statement)**

X The applicant is not presently doing business in Pennsylvania as a public utility.

- The applicant is presently doing business in Pennsylvania as a:
  - Interexchange Toll Reseller, InterLATA and/or IntraLATA, (e.g., MTS, 1+, 800, WATS, Travel and Debit Cards)
  - Interexchange Toll Facilities-based carrier, InterLATA and/or IntraLATA, (e.g., MTS, 1+, 800, WATS, Travel and Debit Cards)
  - Competitive Access Provider (dedicated point-to-point or multipoint service; voice or data)
  - Competitive Local Exchange Carrier:
    - Facilities-Based
    - UNE-P
    - Data Only
    - Reseller
  - Incumbent Local Exchange Carrier.
  - Other (Identify).

**9. APPLICANT'S PROPOSED OPERATIONS:** The Applicant proposes to operate as:

- X Interexchange Toll Reseller, InterLATA and/or IntraLATA, (e.g., MTS, 1+, 800, WATS, Travel and Debit Cards)
- X Interexchange Toll Facilities-based carrier, InterLATA and/or IntraLATA, (e.g., MTS, 1+, 800, WATS, Travel and Debit Cards)  
Competitive Access Provider (dedicated point-to-point or multipoint service; voice or data)
- X Competitive Local Exchange Carrier:
  - X Facilities-based
  - X UNE-P
  - Data Only
  - X Reseller
- Incumbent Local Exchange Carrier
- Other (Identify).

10. **PROPOSED SERVICES:** Describe in detail the services which the Applicant proposes to offer. If proposing to provide more than one category in Item #9, clearly and separately delineate the services within each proposed operation. If proposing to operate as a facilities-based Competitive Local Exchange Carrier, provide a brief description of the Company's facilities.

**Applicant intends to initially serve business and carrier customers, and provide both voice and access services. As business and economic circumstances dictate, Company intends to provide additional local exchange, exchange access and dedicated transport services.**

**Applicant plans to initially develop its network through a combination of its own facilities and leased facilities from other certified carriers. The Company may collocate its equipment in central offices and/or carrier hotels insofar as feasible within the changing telecommunications market.**

**Applicant has no plans to construct outside plant or loop distribution equipment at the current time, but may undertake such actions in the future if changes in market conditions and the Company's business plans dictate.**

11. **SERVICE AREA:** Describe the geographic service area in which the Applicant proposes to offer services. Clearly and separately delineate the service territory for each category listed in Item #9. For Competitive Local Exchange Carrier operations, you must name and serve the Incumbent Local Exchange Carriers in whose territory you request authority.

**By this Application, CallFire seeks authority to operate as a local exchange and interexchange carrier on both a resold and facilities-basis in the areas of Pennsylvania served by Verizon Pennsylvania, Verizon North and CenturyLink. CallFire will provide interexchange service on a statewide basis.**

12. **MARKET:** Describe the customer base to which the Applicant proposes to market its services. Clearly and separately delineate a market for each category listed in Item #9.

**Applicant intends to offer services initially to business and carrier customers, and may offer services to residential customers as economic conditions permit.**

13. **PROPOSED TARIFF(S):** Each category of proposed operations must have a separate and distinct proposed tariff setting forth the rates, rules and regulations of the Applicant. Every proposed tariff shall state on its cover page the nature of the proposed operations described therein, i.e., IXC Reseller, CLEC, CAP, or IXC

IXC Facilities-based. A copy of all proposed tariffs must be appended to each original and duplicate original and copy of Form 377.

**Applicant's proposed local exchange tariff is included as *Exhibit C*. Pursuant to 66 Pa.C.S.A. § 3018, Applicant requests that its interexchange service offerings be detariffed. Applicant will comply with the disclosure requirements of 52 Pa. Code § 63.104.**

**14. FINANCIAL: *Attach the following to the Application:***

A general description of the Applicant's capitalization and, if applicable, its corporate stock structure;

Current balance sheet, Income Statement, and Cash Flow Statement of Applicant or Affiliated Company, if relying on affiliate for financial security;

A tentative operating balance sheet and a projected income statement for the first year of operation within the Commonwealth of Pennsylvania; provide the name, title, address, telephone number and fax number of the Applicant's custodian for its accounting records and supporting documentation; and indicate where the Applicant's accounting records and supporting documentation are, or will be, maintained.

If available, include bond rating, letters of credit, credit reports, insurance coverage and reports, and major contracts.

**Please see *Exhibit D*, filed under seal. A Motion for Protective Order is filed concurrently with this Application.**

**15. START DATE:** The Applicant proposes to begin offering services on or about **December 15, 2013.**

**16. FURTHER DEVELOPMENTS:** Attach to the Application a statement of further developments, planned or contemplated, to which the present Application is preliminary or with which it forms a part, together with a reference to any related proceeding before the Commission.

**None.**

**17. NOTICE:** Pursuant to 52 Pa. Code §5.14, you are required to serve a copy of the signed and verified Application, with attachments, on the below-listed parties, and file proof of such service with this Commission:

**Office of Consumer Advocate**  
555 Walnut Street  
5th Floor, Forum Place

**Office of Small Business Advocate**  
Commerce Building, Suite 1102  
300 North Second Street

**RECEIVED**

Harrisburg, PA 17101-1923

Harrisburg, PA 17101

**Office of Attorney General**  
Office of Consumer Protection  
Strawberry Square  
Harrisburg, PA 17120

***A certificate of service must be attached to the Application as proof of service that the Application has been served on the above-listed parties. A copy of any Competitive Local Exchange Carrier Application must also be served on any and/or all Incumbent Local Exchange Carrier(s) in the geographical area where the Applicant proposes to offer services.***

18. **FEDERAL TELECOMMUNICATIONS ACT OF 1996:** State whether the Applicant claims a particular status pursuant to the Federal Telecommunications Act of 1996. Provide supporting facts.

**Applicant seeks authority as a competitive carrier. Applicant is not an incumbent carrier, nor has served as an incumbent carrier.**

19. **COMPLIANCE:** State specifically whether the Applicant, an affiliate, a predecessor of either, or a person identified in this Application has been convicted of a crime involving fraud or similar activity. Identify all proceedings, limited to proceedings dealing with business operations in the last five (5) years, whether before an administrative body or in a judicial forum, in which the Applicant, an affiliate, a predecessor of either, or a person identified herein has been a defendant or a respondent. Provide a statement as to the resolution or present status of any such proceedings.

**Neither Applicant, an affiliate, a predecessor of rather, or a person identified in this Application has been convicted of a crime involving fraud or similar activity.**

20. **FALSIFICATION:** The Applicant understands that the making of false statement(s) herein may be grounds for denying the Application or, if later discovered, for revoking any authority granted pursuant to the Application. This Application is subject to 18 Pa. C.S. §§4903 and 4904, relating to perjury and falsification in official matters.
21. **CESSATION:** The Applicant understands that if it plans to cease doing business within the Commonwealth of Pennsylvania, it is under a duty to request authority from the Commission for permission prior to ceasing business.

Applicant:

CallFire, Inc. \_\_\_\_\_

By:  \_\_\_\_\_

Title: COO

J. THINAKARAN

22. **AFFIDAVIT:** Attach to the Application an affidavit as follows:

**AFFIDAVIT**

[Commonwealth/State] of California :  
County of Cos Angeles : ss.

J. THINAKARAN, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

Affiant is the COO (Office of Affiant) of CallFire, Inc. (Name of Applicant;)

That Affiant is authorized to and does make this affidavit for said corporation;

That CallFire, Inc., the Applicant herein, acknowledges that [he/she/it] may have an obligation to serve or to continue to serve the public by virtue of the Applicant commencing the rendering of service pursuant to this Application consistent with the Public Utility Code of the Commonwealth of Pennsylvania, Title 66 of the Pennsylvania Consolidated Statutes; with the Federal Telecommunications Act of 1996, signed February 6, 1996, or with other applicable statutes or regulations;

That CallFire, Inc., the Applicant herein, asserts that Affiant] possesses the requisite technical, managerial, and financial fitness to render public utility service within the Commonwealth of Pennsylvania and that the Applicant will abide by all applicable federal and state laws and regulations and by the decisions of the Pennsylvania Public Utility Commission.

That CallFire, Inc., the Applicant herein, asserts that Affiant has contacted the appropriate 911 Coordinator(s) via certified letter, from the list provided from the PUC website (<http://www.puc.state.pa.us>), and that arrangements are under way for the provisioning of emergency 911 service in each of the Counties/Cities where service is to be provided. The applicant certifies Affiant has attached a copy of the 911 Coordinator list indicating each 911 Coordinator contacted.

That the facts above set forth are true and correct] to the best of [Affiant knowledge, information and belief, and that Affiant expects said entity to be able to prove the same at any hearing thereon.

Sworn and subscribed before me this 10<sup>th</sup> day of September, 2013  
Month Year  
[Signature] Signature of Affiant



[Signature]  
Signature of official administering oath

My Commission expires 10/14/16

## Verification

---

I, J. THINAKARAN, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief), and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

11/11/2013  
Date

J. Thinakaran  
Signature

**Exhibit A**  
**Corporate Documents**

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "CALLFIRE, INC.", FILED IN THIS OFFICE ON THE FOURTEENTH DAY OF DECEMBER, A.D. 2012, AT 10 O'CLOCK A.M.

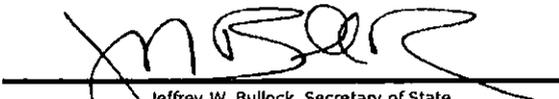
A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

5259033 8100

121340560



You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 0068025

DATE: 12-14-12

**CERTIFICATE OF INCORPORATION  
OF  
CALLFIRE, INC.**

**ARTICLE ONE**

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

**ARTICLE TWO**

The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808-1645, New Castle County. The name of the registered agent of the Corporation at that address is Corporation Service Company.

**ARTICLE THREE**

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

**ARTICLE FOUR**

The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 9,000,000 shares of Common Stock, \$0.0001 par value per share ("Common Stock"), and (ii) 2,669,145 shares of Preferred Stock, \$0.0001 par value per share ("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 Series A Preferred Stock set forth herein.

2. **Voting.** The holders of the Common Stock are entitled to one (1) vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

## B. SERIES A PREFERRED STOCK

2,669,145 of the authorized and unissued shares of Preferred Stock of the Corporation are hereby designated "**Series A Preferred Stock**" with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations. Unless otherwise indicated, references to "Sections" in this Part B of this Article Four refer to sections and subsections of Part B of this Article Four.

1. Dividends. From and after the date of the issuance of any shares of Series A Preferred Stock, dividends at the rate per annum of \$0.5162 per share shall accrue on such shares 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) (the "**Accruing Dividends**"); provided that, once the aggregate amount of the Accruing Dividends equals the Series A Original Issue Price (as defined below), the Accruing Dividends shall cease to accrue and thereafter shares of Series A Preferred Stock shall instead be entitled to receive non-cumulative dividends at the Dividend Rate (as defined below) (the "**Non-Cumulative Dividends**," together with the Accruing Dividends, the "**Series A Dividends**"), which, for the avoidance of the doubt, shall be in addition to, and not in replacement of, the Accruing Dividends. Accruing Dividends shall accrue from day to day, whether or not declared, shall be cumulative and shall be payable (i) in accordance with this Section 1, (ii) immediately prior to the voluntary liquidation, dissolution or winding up of the Corporation, a Deemed Liquidation Event or the conversion of shares of Preferred Stock into Common Stock and (iii) in accordance with Section 5.2. Non-Cumulative Dividends shall not accrue from day to day and, except as set forth in the following sentence of this Section 1, shall be payable only when, as, and if declared by the Board of Directors of the Corporation (the "**Board of Directors**") and the Corporation shall be under no obligation to pay such Non-Cumulative Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends in Common Stock or other securities or rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this Corporation) unless (in addition to the obtaining of any consents required elsewhere in this Certificate of Incorporation) the holders of the Series A Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Preferred Stock in an amount at least equal to the greater of (i) the amount of the aggregate Series A Dividends then accrued or declared on such share of Series A Preferred Stock and not previously paid and (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Series A Preferred Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Series A Preferred Stock determined by (1) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (2) multiplying such fraction by an amount equal to the Series A Original Issue Price (as defined

below); provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Series A Preferred Stock pursuant to this Section 1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Series A Preferred Stock dividend. The holders of Series A Preferred Stock can waive any dividend preference that such holders shall be entitled to receive under this Section 1 upon the affirmative vote or written consent of the holders of a majority of the shares of Series A Preferred Stock then outstanding. The “**Series A Original Issue Price**” shall mean \$6.8828 per share, 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. For purposes of this Section 1, “**Dividend Rate**” shall mean \$0.4130 on each outstanding share of Series A Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like).

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

2.1 Preferential Payments to Holders of Series A Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event (as defined below), the holders of shares of 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 shares of any other class or series of capital stock of the Corporation by reason of their ownership thereof, an amount per share (the “**Series A Liquidation Preference**”) equal to the sum of (i) the Series A Original Issue Price, (ii) the aggregate amount of any unpaid Accruing Dividends on such shares of Series A Preferred Stock, whether or not declared, and (iii) any other dividends declared but unpaid on such shares of Series A Preferred Stock. If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock the full amount to which they shall be entitled under this Section 2.1, the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution 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.

2.2 Distribution of Remaining Assets. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, after the payment of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of the shares of Series A Preferred Stock and Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of this Certificate of Incorporation immediately prior to such dissolution, liquidation or winding up of the Corporation. The aggregate amount which a holder of a share of Series A Preferred Stock is entitled to receive under Sections 2.1 and 2.2 is hereinafter referred to as the “**Series A Liquidation Amount.**”

## 2.3 Deemed Liquidation Events.

2.3.1. Definition. Each of the following events shall be considered a “**Deemed Liquidation Event**” unless the holders of at least a majority of the outstanding shares of Series A Preferred Stock elect otherwise by written notice sent to the Corporation at least 20 days prior to the effective date of any such event:

- (a) a merger or consolidation in which
  - (i) the Corporation is a constituent party or
  - (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly-owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation (provided that, for the purpose of this Section 2.3.1, all shares of Common Stock issuable upon exercise of Options (as defined below) outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged); or

- (b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole (including, without limitation, all or substantially all of the intellectual property of the Corporation and its subsidiaries taken as a whole), or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly-owned subsidiary of the Corporation.

## 2.3.2. Effecting a Deemed Liquidation Event.

- (a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Section 2.3.1(a)(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 Sections 2.1 and 2.2.

(b) In the event of a Deemed Liquidation Event referred to in Section 2.3.1(a)(ii) or 2.3.1(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within 90 days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Series A Preferred Stock no later than the 90<sup>th</sup> 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 (ii) to require the redemption of such shares of Series A Preferred Stock, and (ii) if the holders of at least a majority of the then outstanding shares of Series A Preferred Stock so request in a written instrument delivered to the Corporation not later than 120 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), 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 150<sup>th</sup> day after such Deemed Liquidation Event, to redeem all outstanding shares of Series A Preferred Stock at a price per share equal to the Series A Liquidation Amount. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Series A Preferred Stock, the Corporation shall redeem a pro rata portion of each holder’s shares of 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 6 shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Series A Preferred Stock pursuant to this Section 2.3.2(b). Prior to the distribution or redemption provided for in this Section 2.3.2(b), 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.

2.3.3. Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors, including the affirmative vote or approval of the Series A Directors (as defined below).

2.3.4. Allocation of Escrow. In the event of a Deemed Liquidation Event pursuant to Section 2.3.1(a)(i), if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow and/or is payable to the stockholders of the Corporation subject to contingencies, the Merger Agreement shall provide that (a) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the “Initial Consideration”) shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2.1 and 2.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event and (b) any additional consideration which becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of

the Corporation in accordance with Sections 2.1 and 2.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction.

### 3. Voting.

3.1 General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Series A Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of this Certificate of Incorporation, holders of Series A Preferred Stock shall vote together with the holders of Common Stock as a single class on an as-converted basis.

3.2 Election of Directors. The holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation (the “**Series A Directors**”) and the holders of record of the shares of Common Stock shall be entitled to elect three (3) directors of the Corporation (the “**Common Directors**”). Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. If the holders of shares of Series A Preferred Stock or Common Stock, as the case may be, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to the first sentence of this Section 3.2, then any directorship not so filled shall remain vacant until such time as the holders of the Series A Preferred Stock or Common Stock, as the case may be, elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Series A Preferred Stock), exclusively and voting together as a single class on an as-converted basis, shall be entitled to elect two (2) directors of the Corporation (the “**Independent Directors**”). At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Each Series A Director shall be entitled to cast one and one-half (1 ½) votes on each matter presented to the Board of Directors for its vote, action or consideration until such time as at least one (1) director who is not (i) a Common Director, (ii) an employee of the Corporation or (iii) affiliated with any holder of Series A Preferred Stock is elected to the Board of Directors. Thereafter, each Series A Director shall be entitled to cast one (1) vote on each matter presented to the Board Directors for its vote, action or consideration. In the event that there is, at any time, less than two Independent Directors then serving on the Board of Directors, the then serving Independent Director shall be entitled to cast two (2) votes on each matter presented to the Board of Directors concerning the election, appointment or removal (but not termination) of the Chief Executive Officer of the Corporation. Except as otherwise provided in this Section 3.2, a

vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Section 3.2. The rights of the holders of the Series A Preferred Stock under the first sentence of this Section 3.2 shall terminate on the first date following the Series A Original Issue Date (as defined below) on which there are issued and outstanding less than 508,513 shares 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).

3.3 Series A Preferred Stock Protective Provisions. At any time when at least 508,513 shares 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) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Certificate of Incorporation) the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class:

3.3.1. liquidate, dissolve or wind-up the business and affairs of the Corporation, or initiate any bankruptcy or insolvency proceeding with respect to the Corporation,

3.3.2. effect any reclassification or recapitalization of the outstanding capital stock of the Company;

3.3.3. effect any Deemed Liquidation Event that would result in proceeds to the holders of Preferred Stock of less than two (2) times the Series A Liquidation Amount in cash or publicly tradeable, registered, liquid securities (without any lock-up or other restriction on transfer);

3.3.4. amend, alter or repeal any provision of this Certificate of Incorporation or the Bylaws of the Corporation in a manner that adversely affects the powers, preferences or rights of the Series A Preferred Stock;

3.3.5. amend or alter any of the rights, preferences or privileges of the Series A Preferred Stock;

3.3.6. create, or authorize the creation of, or issue or obligate itself to issue shares of, any additional class or series of capital stock unless the same ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation (including a Deemed Liquidation Event), voting rights, conversion rights, the payment of dividends and rights of redemption or any other rights, or increase or decrease the authorized number of shares of any class or series of capital stock of the Corporation;

3.3.7. purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital

stock of the Corporation other than (i) redemptions of or dividends or distributions on the Series A Preferred Stock as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock (iii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service and (iv) securities repurchased by the Corporation as a result of the exercise by the Corporation of a right of first refusal;

3.3.8. create, or authorize the creation of, or issue, or authorize the issuance of any debt security, or permit any subsidiary to take any such action with respect to any debt security, or otherwise incur indebtedness for borrowed money, if the aggregate indebtedness of the Corporation and its subsidiaries for borrowed money following such action would exceed \$3,000,000 in the aggregate, other than trade credit incurred in the ordinary course of business or indebtedness incurred pursuant to the issuance of secured promissory notes to Multiplier Capital, LLC (and/or its affiliates) in the aggregate principal amount of \$10,250,000 (the "Debt Facility");

3.3.9. acquire any capital stock of any other entity or acquire all, or substantially all, of the assets of any other entity (other than any wholly-owned subsidiary of the Corporation);

3.3.10. increase or decrease the authorized number of directors constituting the Board of Directors;

3.3.11. pledge, mortgage, encumber or place a lien on all or substantially all of the assets of the Corporation and its subsidiaries taken as a whole other than any such pledge, mortgage, lien or encumbrance created in connection with the Debt Facility;

3.3.12. directly or indirectly sell, assign, lease or otherwise dispose of any of the assets of the Corporation or any of its subsidiaries, other than in the ordinary course of business or in a transaction that relates to the Corporation's product development;

3.3.13. otherwise enter into or be a party to any transaction with any (i) director, officer, beneficial owner of one percent (1%) or more of the voting capital stock of the Corporation (determined on a fully-diluted basis) or (ii) person or entity that, directly or indirectly, controls, is controlled by or under common control with, any of the foregoing, except for employment agreements entered into by the Corporation in the ordinary course of business consistent with past practice;

3.3.14. change the principal business of the Corporation, enter new lines of business, or exit the current line of business; or

3.3.15. hire or remove the Chief Executive Officer of the Corporation (or the equivalent executive officer of the Corporation).

#### 4. Optional Conversion.

The holders of the Series A Preferred Stock shall have conversion rights as follows (the “**Conversion Rights**”):

##### 4.1 Right to Convert.

4.1.1. Conversion Ratio. Each share of Series A 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 Series A Original Issue Price by the Series A Conversion Price (as defined below) in effect at the time of conversion. The “**Series A Conversion Price**” shall initially be equal to \$6.8828. Such initial Series A Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

4.1.2. Termination of Conversion Rights. In the event of a notice of redemption of any shares of Series A Preferred Stock pursuant to Section 6, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not fully paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation, dissolution or winding up of the Corporation or 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 Series A Preferred Stock.

4.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock the holder is holding at the time such holder is converting shares of Series A Preferred Stock into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

##### 4.3 Mechanics of Conversion.

4.3.1. Notice of Conversion. In order for a holder of Series A Preferred Stock to voluntarily convert shares of Series A Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock (or, if such registered 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), at the office of the transfer agent for the Series A 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 Series A Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. 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, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice shall be the time of conversion (the "**Conversion Time**"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, (i) issue and deliver to such holder of Series A Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Series A Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Section 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the shares of Series A Preferred Stock converted.

4.3.2. Reservation of Shares. The Corporation shall at all times when the Series A Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, (i) for the purpose of effecting the conversion of the Series A 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 Series A Preferred Stock and (ii) for the purpose of issuing shares of Series A Preferred Stock in connection with the payment of the Accruing Dividends, such number of its duly authorized shares of Series A Preferred Stock as shall from time to time be sufficient to issue all of the shares of Series A Preferred Stock issuable upon the payment of the Accruing Dividends; and if at any time the number of authorized but unissued shares of (X) Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock and/or (Y) Series A Preferred Stock shall not be sufficient to effect the issuance of all of the shares of Series A Preferred Stock issuable upon the payment of the Accruing Dividends, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock and/or Series A Preferred Stock, as the case may be, to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Series A Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A 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 Series A Conversion Price.

4.3.3. Effect of Conversion. All shares of Series A 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 shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Section 4.2 and to receive payment of any dividends declared but unpaid thereon. Any shares of Series A Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock accordingly.

4.3.4. No Further Adjustment. Upon any such conversion, no adjustment to the Series A Conversion Price shall be made for any declared but unpaid dividends on the Series A Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

4.3.5. Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series A 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 Series A 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.

#### 4.4 Adjustments to Series A Conversion Price for Diluting Issues.

4.4.1. Special Definitions. For purposes of this Article Four, the following definitions shall apply:

(a) “**Additional Shares of Common Stock**” shall mean all shares of Common Stock issued (or, pursuant to Subsection 4.4.3 below, deemed to be issued) by the Corporation after the Series A Original Issue Date, other than (1) the following shares of Common Stock and (2) shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, “**Exempted Securities**”):

(i) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on Series A Preferred Stock;

(ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Section 4.5, 4.6, 4.7 or 4.8;

(iii) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors, including the affirmative vote or consent of the Series A Directors;

(iv) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(v) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors, including the affirmative vote or consent of the Series A Directors;

(vi) shares of Common Stock, Options or Convertible Securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors, including the affirmative vote or consent of the Series A Directors;

(vii) shares of Common Stock, Options or Convertible Securities issued pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided, that such issuances are approved by the Board of Directors, including the affirmative vote or consent of the Series A Directors; or

(viii) shares of Common Stock issued in a Qualified Public Offering (as defined below).

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

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

(d) “**Series A Original Issue Date**” shall mean the date on which the first share of Series A Preferred Stock was issued.

4.4.2. No Adjustment of Series A Conversion Price. No adjustment in the Series A Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series A Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

4.4.3. Deemed Issue of Additional Shares of Common Stock.

(a) If the Corporation at any time or from time to time after the Series A Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any

such Options or Convertible Securities, then the maximum number of shares 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.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Series A Conversion Price pursuant to the terms of Section 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Series A Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Series A Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing the Series A Conversion Price to an amount which exceeds the lower of (i) the Series A Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the Series A Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Series A Conversion Price pursuant to the terms of Section 4.4.4 (either because the consideration per share (determined pursuant to Section 4.4.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Series A Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series A Original Issue Date), are revised after the Series A Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in

Section 4.4.3(a) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(d) 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 Series A Conversion Price pursuant to the terms of Section 4.4.4, the Series A Conversion Price shall be readjusted to such Series A Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(e) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Series A Conversion Price provided for in this Section 4.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Section 4.4.3). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Series A Conversion Price that would result under the terms of this Section 4.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Series A Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

4.4.4. Adjustment of Series A Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Series A Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4.4.3), without consideration or for a consideration per share less than the Series A Conversion Price in effect immediately prior to such issue, then the Series A Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) + (A + C).$$

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

(a) "CP<sub>2</sub>" shall mean the Series A Conversion Price in effect immediately after such issue of Additional Shares of Common Stock;

(b) "CP<sub>1</sub>" shall mean the Series A Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

(c) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Series A Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

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

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

4.4.5. Determination of Consideration. For purposes of this Section 4.4, 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:

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

(ii) 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; and

(iii) 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 (i) and (ii) 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 Section 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing:

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

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

4.4.6. Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Series A Conversion Price pursuant to the terms of Section 4.4.4, then, upon the final such issuance, the *Series A Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).*

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series A Original Issue Date effect a subdivision of the outstanding Common Stock, the Series A Conversion Price 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 Series A Original Issue Date combine the outstanding shares of Common Stock, the Series A Conversion Price 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 subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.6 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series A Original Issue 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 in additional shares of Common Stock, then and in each such event the Series A Conversion Price 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 Series A Conversion Price then in effect by a fraction:

(1) 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

(2) 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.

Notwithstanding the foregoing, (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 Series A Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of Series A 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 Series A Preferred Stock had been converted into Common Stock on the date of such event.

4.7 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series A Original Issue 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 in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 1 do not apply to such dividend or distribution, then and in each such event the holders of Series A Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event.

4.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 2.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series A Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Sections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series A Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series A Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Series A 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 Series A Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock.

4.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A 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 Series A Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property

into which the Series A 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 after the written request at any time of any holder of Series A Preferred Stock (but in any event not later than 10 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Series A Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series A Preferred Stock.

4.10 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Series A Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series A Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Series A Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series A Preferred Stock and the Common Stock. Such notice shall be sent at least 10 days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion.

5.1 Trigger Events. Upon either (a) the closing of the sale of shares of Common Stock to the public at a price (the "IPO Sale Price") of at least \$20.6485 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in an underwritten public offering supported by an underwriter of recognized national standing pursuant to an effective registration statement under the Securities Act of 1933, as amended, pursuant to which shares of Common Stock are listed on a nationally recognized stock exchange and resulting in at least \$35,000,000 of gross proceeds to the Corporation (a "Qualified Public Offering") or (b) the

date and time, or the occurrence of an event, specified by vote or written consent of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the “**Mandatory Conversion Time**”), (i) all outstanding shares of Series A Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate and (ii) such shares may not be reissued by the Corporation.

5.2 Payments Upon a Qualified Offering. In addition to the conversion rights of the Series A Preferred Stock provided for in Sections 4 and 5.1, in connection with the first Qualified Public Offering, the Corporation shall pay to the holders of Series A Preferred Stock cash in an amount per share (the “**IPO Cash Payment**”) equal to the Series A Liquidation Preference; provided that, if the holders of a majority of the shares of Series A Preferred Stock outstanding immediately prior to the Mandatory Conversion Time so elect in a written instrument delivered to the Corporation, then in lieu of the payment of the IPO Cash Payment, the Corporation shall issue to each such holder of Series A Preferred Stock additional shares of Common Stock in an amount equal to the quotient (rounded to the nearest whole number of shares) of (i) the aggregate IPO Cash Payment payable to such holder of Series A Preferred Stock divided by (ii) the IPO Sale Price.

5.3 Procedural Requirements. All holders of record of shares of Series A Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Series A Preferred Stock pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Series A 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. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Series A Preferred Stock converted pursuant to Section 5.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender the certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Section 5.3. As soon as practicable after the Mandatory Conversion Time and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series A Preferred Stock, the Corporation shall issue and deliver to such holder, or to his, her or its nominees, 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 Section 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion, the payment of any declared but unpaid dividends on the shares of Series A Preferred Stock converted and, in the case of a Qualified Public Offering, any payments due or securities to be issued to such holder pursuant to Section 5.2. Such converted Series A Preferred Stock shall be

retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock accordingly.

6. Redemption.

6.1 General. Unless prohibited by Delaware law governing distributions to stockholders, shares of Series A Preferred Stock shall be redeemed by the Corporation at a price per share equal to the greater of (A) the Series A Liquidation Preference and (B) the Fair Market Value (determined in the manner set forth below) of a single share of Series A Preferred Stock as of the date of the Corporation's receipt of the Redemption Request (the "**Redemption Price**"), in four consecutive quarterly installments commencing not more than 60 days after receipt by the Corporation at any time on or after the seventh anniversary of the Series A Original Issue Date, from the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, of written notice requesting redemption of all shares of Series A Preferred Stock (the "**Redemption Request**"). Upon receipt of a Redemption Request, the Corporation shall apply all of its assets to any such redemption, and to no other corporate purpose, except to the extent prohibited by Delaware law governing distributions to stockholders. For purposes of this Section 6.1, the Fair Market Value of a single share of Series A Preferred Stock shall be the value of a single share of Series A Preferred Stock as mutually agreed upon by the Corporation and the holders of a majority of the shares of Series A Preferred Stock then outstanding, and, in the event that they are unable to reach agreement, by a third-party appraiser agreed to by the Corporation and the holders of a majority of the shares of Series A Preferred Stock then outstanding. The date of each such installment shall be referred to as a "**Redemption Date.**" On each Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series A Preferred Stock owned by each holder, that number of outstanding shares of Series A Preferred Stock determined by dividing (i) the total number of shares of Series A Preferred Stock outstanding immediately prior to such Redemption Date by (ii) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). If on any Redemption Date Delaware law governing distributions to stockholders prevents the Corporation from redeeming all shares of Series A Preferred Stock to be redeemed, the Corporation shall ratably redeem the maximum number of shares that it may redeem consistent with such law, and shall redeem the remaining shares as soon as it may lawfully do so under such law.

6.2 Redemption Notice. The Corporation shall send written notice of the mandatory redemption (the "**Redemption Notice**") to each holder of record of Series A Preferred Stock not less than 40 days prior to each Redemption Date. Each Redemption Notice shall state:

6.2.1. the number of shares of Series A Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;

6.2.2. the Redemption Date and the Redemption Price;

6.2.3. the date upon which the holder's right to convert such shares terminates (as determined in accordance with Section 4.1); and

6.2.4. 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 Series A Preferred Stock to be redeemed.

6.3 Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Series A Preferred Stock to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 4, shall surrender the certificate or certificates representing such shares (or, if such registered 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, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Series A Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series A Preferred Stock shall promptly be issued to such holder.

6.4 Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the Redemption Price payable upon redemption of the shares of Series A Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor in a timely manner, then notwithstanding that the certificates evidencing any of the shares of Series A Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Series A Preferred Stock shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate or certificates therefor.

7. Redeemed or Otherwise Acquired Shares. Any shares of Series A Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Series A Preferred Stock following such acquisition.

8. Waiver. Any of the rights, powers, preferences and other terms of the Series A Preferred Stock set forth herein may be waived on behalf of all holders of Series A Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Series A Preferred Stock then outstanding.

9. Notices. Any notice required or permitted by the provisions of Part B of this Article Four to be given to a holder of shares of Series A Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given

by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission. Any notice required by the provisions of Part B of this Article Four to be given to the Corporation shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to the Board of Directors at the principal business address of the Corporation.

#### ARTICLE FIVE

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

#### ARTICLE SIX

Subject to any additional vote required by this Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

#### ARTICLE SEVEN

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

#### ARTICLE EIGHT

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

#### ARTICLE NINE

To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Nine to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

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

## ARTICLE TEN

To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

Any amendment, repeal or modification of the foregoing provisions of this Article Ten shall not adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification.

## ARTICLE ELEVEN

The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any **Excluded Opportunity**. An **“Excluded Opportunity”** is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Series A Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, **“Covered Persons”**), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Corporation.

\* \* \*

I, the undersigned, being the sole incorporator hereinbefore named, for the purpose of forming a corporation in accordance with to the General Corporation Law of the State of Delaware, do make and file this certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set my hand this 14<sup>th</sup> day of December, 2012.

/s/ Kirstin Choi

Kirstin Choi, Incorporator  
15260 Ventura Boulevard  
20th Floor  
Sherman Oaks, CA 91403

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF CORPORATIONS AND CHARITABLE ORGANIZATIONS  
401 NORTH STREET, ROOM 206  
P.O. BOX 8722  
HARRISBURG, PA 17105-8722  
WWW.CORPORATIONS.STATE.PA.US/CORP

CALLFIRE, INC.

THE BUREAU OF CORPORATIONS AND CHARITABLE ORGANIZATIONS IS HAPPY TO SEND YOU YOUR FILED DOCUMENT. THE BUREAU IS HERE TO SERVE YOU AND WANTS TO THANK YOU FOR DOING BUSINESS IN PENNSYLVANIA.

IF YOU HAVE ANY QUESTIONS PERTAINING TO THE BUREAU, PLEASE VISIT OUR WEB SITE LOCATED AT WWW.CORPORATIONS.STATE.PA.US/CORP OR PLEASE CALL OUR MAIN INFORMATION TELEPHONE NUMBER (717)787-1057. FOR ADDITIONAL INFORMATION REGARDING BUSINESS AND / OR UCC FILINGS, PLEASE VISIT OUR ONLINE "SEARCHABLE DATABASE" LOCATED ON OUR WEB SITE.

ENTITY NUMBER: 4203007

CT CORPORATION SYSTEM  
116 Pine Street, Suite 320  
Harrisburg, PA 17101

PENNSYLVANIA DEPARTMENT OF STATE  
BUREAU OF CORPORATIONS AND CHARITABLE ORGANIZATIONS

Application for Certificate of Authority  
(15 Pa.C.S.)

- Foreign Business Corporation (§ 4124)  
 Foreign Nonprofit Corporation (§ 6124)

Name: **CT COUNTER**  
Address: **CT COUNTER**  
City: **8841924** State: **SO** Zip Code: **PA 10**

Document will be returned to the name and address you enter to the left.

Commonwealth of Pennsylvania  
CERTIFICATE OF AUTHORITY 3 Page(s)



Fee: \$250

In compliance with the requirements of the applicable provisions of 15 Pa.C.S. (relating to corporations and unincorporated associations), the undersigned, hereby states that:

1. The name of the corporation is:  
**CALLFIRE, INC.**

2. Complete only when the corporation must adopt a corporate designator for use in Pennsylvania:  
The name which the corporation adopts for use in this Commonwealth is:

3. If the name set forth in paragraph 1 or 2 is not available for use in this Commonwealth, complete the following:  
The fictitious name which the corporation adopts for use in transacting business in this Commonwealth is:  
  
The corporation shall do business in Pennsylvania only under such fictitious name pursuant to the attached resolution of the board of directors under the applicable provisions of 15 Pa.C.S. (relating to corporations and unincorporated associations) and the attached form DSCB:54-31.1 (Application for Registration of Fictitious Name).

4. The name of the jurisdiction under the laws of which the corporation is incorporated is:  
**Delaware**

5. The address of its principal office under the laws of the jurisdiction in which it is incorporated is:  
**1335 4th Street, Santa Monica, CA 90401**  
Number and street City State Zip

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6. The (a) address of this corporation's proposed registered office in this Commonwealth or (b) name of its commercial registered office provider and the county of venue is:

(a) Number and street	City	State	Zip	County
(b) Name of Commercial Registered Office Provider c/o: C T Corporation System				County Dauphin

7. Check one of the following:

**Business Corporation:** The corporation is a corporation incorporated for a purpose or purposes involving pecuniary profit, incidental or otherwise.

**Nonprofit Corporation:** The corporation is a corporation incorporated for a purpose or purposes not involving pecuniary profit, incidental or otherwise.

IN TESTIMONY WHEREOF, the undersigned corporation has caused this Application for Certificate of Authority to be signed by a duly authorized officer thereof this 9<sup>th</sup> day of July, 2013.

CALLFIRE, INC.  
Name of Corporation

[Signature]  
Signature

TJ Thnakara, Chief Operating Officer  
Title

## **Exhibit B**

### **Officer and Management Biographies**

Applicant's management team includes individuals with substantive experience in successfully developing and operating telecommunications businesses. Consequently, CallFire has the adequate internal technical resources to support its Pennsylvania operations. This expertise in the telecommunications industry makes Applicant's management well-qualified to operate its operations in Pennsylvania. Specific details of the business and technical experience of CallFire's officers and management personnel are attached below.

#### **Dinesh Ravishanker**

##### **Chief Executive Officer & Co-Founder**

As a key innovator and CEO, Dinesh drives corporate strategy, product R&D and business development. Dinesh originally spearheaded GUI design for CallFire and then the R&D behind our most popular products like Text Messaging, Phone Numbers and our Voice Messaging API. Prior to this, Dinesh led enterprise-level software projects for the U.S. Navy, Pfizer, and Unisys Corp. His love for design began while using his father's TRS-80, Commodore, Atari and Mac IISi. Even today, he enjoys living in Photoshop and disrupting UX paradigms. Dinesh earned his BS in Computer Science and an MBA from UC Irvine. When he's not building products, you might find Dinesh working toward his blue belt in Brazilian Jiu Jitsu, watching a TED flick, devouring some Sushi or uselessly obsessing over the impending Singularity.

#### **Ron Burr**

##### **Chief Revenue Officer**

He may have just recently hopped on the CallFire express, but Web pioneer Ron Burr is already having a significant impact. He oversees sales, marketing and business-development initiatives, expands the range of clients served, and builds vendor, partner and investor relationships. Ron founded NetZero, eventually helping it become one of the world's largest Internet service providers. Holder of eight Internet technology patents in online advertising and market research, he was named one of the "25 Top Unsung Heroes of the Net" by Interactive Week, one of the "21 people leading us into the 21st Century" by Response Magazine, and one of the "Top 50 IT executives at xSPs" by InfoWorld. Ron also serves as an advisor and board member for his nonprofit, Faith Horizon.

#### **Komnieve Singh**

##### **President & Co-Founder**

A meditator and a motivator, Komnieve manages our superior Sales & Support team at CallFire. One of our co-founders, he originally served as the systems architect and played a key role in building the core infrastructure that powers our platform. He has almost 13 years of experience in managing companywide IT initiatives, scalable VoIP architectures, and networks that must continuously work in order for the business to function. In doing so, he's garnered a reputation as a proven VoIP veteran with a track record of delivering results on ambitious projects. In addition to his love of meditation, Komnieve greatly brightens our daily work life by bringing his beautiful Chocolate Labrador, Ronak, to our offices.

#### **TJ Thinakaran**

### **Chief Operating Officer & Partner**

TJ is responsible for day-to-day operations at CallFire, as well as overseeing CallFire's major business development initiatives. He has more than a decade of experience in software solutions and architectures. Before joining CallFire as a partner, he worked at IBM Corporation, where he earned a reputation for consistently delivering on high-visibility, high-risk projects. He has authored many IBM Academy of Technology studies and was a frequent speaker at various technology leadership conferences. TJ graduated magna cum laude from the University of California, Irvine, with a bachelor's degree in computer science and a master's in informatics. When not at his desk, you'll find him on his yoga mat or cycling the canyons of Malibu.

### **Vijesh Mehta**

#### **Chief Technology Officer & Co-Founder**

Vijesh has over 10 years of experience taking web-based services to market and sits on the board of four major web-based platforms. He also has extensive experience in shaping corporate strategy and exceptional knowledge of highly scalable software architectures. His previous endeavors include the widely recognized consulting firm Skyy Consulting, which developed one of the largest open-source telecom platforms available today. Fun fact: Vijesh got his first computer at age 8, at which point he proceeded to write his first lines of code in Basic while trying to get a game to work.

### **Punit "Pete" Shah**

#### **Chief Information Officer & Co-Founder**

A developer by trade but business technologist at heart, Punit has over a decade of experience with product design and execution. Early in his career, he served on engineering teams at Microsoft, co-patented technology for stroke rehabilitation, and began building VoIP systems that handled tens of millions of calls monthly for telecom carriers. Today, his industry experience and business mind are a rare commodity - while primarily driving product design and requirements he contributes on most teams here, including operations, development, marketing and design. Its no coincidence, he is also regularly advising the startup community. Apart from CallFire, Punit is a little-well-known socialite in the Los Angeles area - spending his free time dancing, traveling, and rubbing shoulders with his tens of thousands of contacts. He holds a bachelor's in computer science from the University of California, Irvine and a master's in information technology from Harvard University. Fun fact: Way back when - he created the CallFire brand name!

**CERTIFICATE OF SERVICE**

I hereby certify that on October 15, 2013, I served a copy of **CallFire, Inc.’s Amendment to the Application for Certification as a Competitive Local Exchange Carrier and Interexchange Carrier** upon the entities listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**First Class Mail:**

**Verizon North Inc.**  
1717 Arch Street  
Philadelphia, PA 19103

**United Telephone Company, d/b/a CenturyLink**  
6391 Sprint Parkway  
Overland Park, KS 66251-6100

**Verizon Pennsylvania Inc.**  
1717 Arch Street  
Philadelphia, PA 19103

**Office of Small Business Advocate**  
Commerce Building, Suite 1102  
300 North Second Street  
Harrisburg, PA 17101

**Office of Consumer Advocate**  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923

**Office of Attorney General**  
Office of Consumer Protection  
Strawberry Square  
Harrisburg, PA 17120

RECEIVED

OCT 15 2013

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU



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Dated: October 15, 2013

Katherine Barker Marshall, Esq.

**CERTIFICATE OF SERVICE**

I, Michele Depasse, hereby certify that on this 12<sup>th</sup> day of September, 2013, a true and correct copy of the foregoing **Application of CallFire, Inc. for a Certificate of Public Convenience and Necessity to Provide Local Exchange Service** was served by certified mail return receipt requested to the Pennsylvania 911 coordinators listed below:

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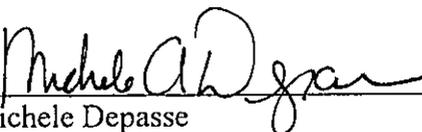
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