

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
AKERMIN, INC.**

The undersigned, being the Chief Executive Officer of Akermin, Inc., a corporation organized and existing under the Delaware General Corporation Law, does hereby certify that:

1. The name of the corporation is Akermin, Inc. The Certificate of Incorporation of Akermin, Inc. was originally filed with the Secretary of State of the State of Delaware on March 2, 2006.
2. This Amended and Restated Certificate of Incorporation of Akermin, Inc. has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware and written notice of the adoption of this Amended and Restated Certificate of Incorporation has been given as provided by Section 228 of the General Corporation Law of the State of Delaware to the stockholders entitled to such notice.
3. The text of the Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

FIRST. The name of the Corporation is Akermin, Inc.

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

THIRD. The nature of the business or the objects or purposes to be conducted or promoted by the Corporation are to engage in any part of the world and in any capacity in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law (the "DGCL") as now in force or as hereafter amended and to possess, exercise and enjoy all the powers, rights and privileges granted by the DGCL, together with any lawful powers, rights and privileges incidental thereto.

FOURTH:

A. Classes and Number of Shares. The aggregate number of shares of capital stock which the Corporation is authorized to issue is forty-eight million five hundred thousand (48,500,000) shares, consisting of:

(i) twenty-nine million (29,000,000) shares of common stock, par value \$0.005 per share ("Common Stock"); and

(ii) nineteen million five hundred thousand (19,500,000) shares of preferred stock, par value \$0.005 per share ("Preferred Stock"), all of which shares are designated as Series A Convertible Preferred Stock ("Series A Preferred Stock").

B. Terms of Preferred Stock.

1. Series A Preferred Stock. The preferences and relative, participating, optional and other special rights of Series A Preferred Stock, and the qualifications, limitations and restrictions thereof, are as follows:

(i) **Dividends.** The holders of shares of the Series A Preferred Stock shall not be entitled to receive any fixed dividends thereon. Cash or other types of dividends (other than fixed dividends) may be declared and paid upon the Series A Preferred Stock in such amounts and at such times as the Corporation's Board of Directors ("Board of Directors") may determine, which determination shall require the prior approval of a majority of the "Series A Directors" as such term is defined in that Amended and Restated Shareholders Agreement dated on or about March __, 2007 by and among the Corporation and the other parties thereto, as amended, if amended, from time-to-time ("Shareholders Agreement"), whether or not any dividends are declared and paid upon the Common Stock.

(ii) Redemption.

(a) *Right to Require Redemption.* Shares of Series A Preferred Stock shall be redeemed by the Corporation within 60 days after delivery of written notice from the holders of at least 66.67% of the then outstanding shares of Series A Preferred Stock (the "Supermajority Holders") requesting redemption of all or any portion of the shares of Series A Preferred Stock at any time on or after the fifth (5th) anniversary of the Original Issue Date (as defined below).

(b) *Redemption Price.* The redemption price (the "Redemption Price") for any shares of Series A Preferred Stock redeemed under this Section B.1(ii) shall be equal to the greater of: (i) \$0.415702 (the "Original Issue Price") per share (as adjusted for any stock dividends, combinations, reverse stock splits, stock splits, recapitalizations, reorganizations, reclassifications or other similar event with respect to shares) plus all declared but un-paid dividends thereon, and (ii) the Fair Market Value of such shares on an As-If-Converted Basis as hereinafter defined, at the time of such redemption. "Fair Market Value" shall mean the fair market value as agreed upon by a majority of the disinterested directors of the Corporation and the Supermajority Holders, and in the event that the Corporation and the Supermajority Holders do not agree upon the fair market value, then the Fair Market Value shall be as determined by an independent third party appraiser without taking into consideration any discount for minority positions.

(c) *Procedure for Redemption.*

(i) Any notice by the Supermajority Holders of their election that shares be redeemed which is to be delivered to the Corporation pursuant to clause B.1(ii)(a) shall be delivered to the Corporation at its principal place of business at the time, to the attention of the President, by (A) first class certified or registered mail, postage prepaid, (B) nationally recognized overnight courier service, or (C) personal delivery.

(ii) On or prior to any redemption date, each holder of Series A Preferred Stock which has shares which are to be redeemed on such redemption date shall surrender her, his or its certificates representing the shares to be redeemed on such redemption date to the Corporation, in the manner and at the place designated by the Corporation, acting reasonably, and against such surrender the Redemption Price of such shares shall be paid on the redemption date to the order of the person whose name appears on each such certificate as the owner thereof. Each surrendered certificate shall be canceled and retired. If fewer than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(iii) If the funds of the Corporation legally available for redemption of the Series A Preferred Stock on a redemption date are insufficient to redeem the full number of shares of Series A Preferred Stock required by this Certificate of Incorporation to be redeemed on such date, those funds which are legally available shall be used to redeem the maximum possible number of shares of such Series A Preferred Stock, ratably among the holders of the Series A Preferred Stock based upon the number of such shares of Series A Preferred Stock that each such holder thereof is entitled to have redeemed on such redemption date. At any time thereafter when additional funds of the Corporation become legally available for the redemption of the Series A Preferred Stock, such funds will be used promptly to redeem the balance of the Series A Preferred Stock which the Corporation was theretofore obligated to redeem, ratably on the basis set forth in the preceding sentence.

(iv) The date on which the redemption of any Series A Preferred Stock is to occur may be delayed if an independent third-party appraisal is required to determine the Redemption Price. In such case, said redemption shall occur within thirty (30) days of the determination of Fair Market Value by the independent third-party appraiser.

(iii) **Liquidation Rights.**

(a) In the event of any liquidation, dissolution or winding up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding-up the Corporation's affairs, whether voluntary or involuntary (each a "Dissolution Event"), each holder of shares of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock or any other security ranking junior to the Series A Preferred Stock as to liquidation, distributions in cash, securities or other property (valued as provided in paragraph (d) of this Section B.1(iii)) equal to the Original Issue Price then held by such holder (as adjusted for any stock dividends, combinations, reverse stock splits, stock splits, recapitalizations, reorganizations, reclassifications or other similar event with respect to shares), plus all declared, but un-paid dividends thereon (the "Series A Preference Amount"). If upon the occurrence of a Dissolution Event, the assets and funds legally available for distribution among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full Series A Preference Amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of Series A Preferred Stock in proportion to the full Series A Preference Amount each such holder is otherwise entitled to receive.

(b) For purposes of this Article Fourth of this Certificate of Incorporation, unless otherwise determined by the Supermajority Holders, each of the following (each a "Fundamental Change") as well as a sale to a Purchaser (as herein defined) conducted in accordance with paragraph (e) of this Section B.1(iii) (a "Drag-Along Sale"), shall be treated as a

Dissolution Event and shall entitle the holders of Series A Preferred Stock to receive at the closing from the Corporation, purchaser, surviving or acquiring entity or the transferee in cash, securities or other property (valued as provided in paragraph (d) of this Section B.1(iii)) an amount equal to the Series A Preference Amount upon the occurrence of such Fundamental Change or Drag-Along Sale: (1) the closing of the sale, transfer or other disposition of all or substantially all of the Corporation's assets (including, but not limited to, the licensing of all or substantially all of the intellectual property assets of the Corporation to one or more third parties), (2) the consummation of a merger or consolidation of the Corporation with or into another entity (except a merger or consolidation in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold at least 50% of the voting power of the capital stock of the Corporation or the surviving or acquiring entity), or (3) the closing of the transfer (whether by financing, merger, consolidation or otherwise), in one transaction or a series of related transactions, to a person or group of affiliated persons (other than an underwriter of the Corporation's securities), of the Corporation's securities if, after such closing and as a result of such transaction(s), the Corporation's shareholders before such event would own as a result of their ownership of the Corporation's securities before such event fifty percent (50%) or less of the Corporation's voting securities after such event; provided, however, that a transaction shall not constitute a Fundamental Change if its sole purpose is to change the state of the Corporation's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Corporation's securities immediately prior to such transaction. Notwithstanding the prior sentence, the sale of shares of Series A Preferred Stock in a financing transaction shall not be deemed a "Fundamental Change". The treatment of any particular transaction or series of related transactions as a Fundamental Change may be waived by the vote or written consent of the Supermajority Holders.

(c) In the event of a Dissolution Event, Fundamental Change treated as a Dissolution Event under Section B.1(iii)(b) above, or Drag-Along Sale, then after the payment to the holders of shares of the Series A Preferred Stock of the full Series A Preference Amount, the remaining assets and funds of the Corporation, if any, including amounts paid to the Corporation and/or shareholders upon the occurrence of such Fundamental Change or Drag-Along Sale, 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 of Common Stock held or deemed 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 Event, Fundamental Change treated as a Dissolution Event under Section B.1(iii)(b) above, or Drag-Along Sale.

(d) Whenever the distribution provided for in this Section B.1(iii) shall be payable in securities or property other than cash, the value of such distribution shall be the Fair Market Value of such securities or other property.

(e) Subject to paragraph (g) of this Section B.1(iii), if:

(I) shareholders (the "Accepting Shareholders") holding not less than 66.67% of the outstanding Series A Preferred Stock have agreed to Transfer (as defined below) to a Person (as defined below)) or Persons acting in concert (a "Purchaser"), all of their shares of Series A Preferred Stock and Common Stock; and

(II) the Purchaser offers to each of the other shareholders (the "Forced Shareholders") to purchase the remaining securities of the Corporation (the "Specified Securities") on equivalent terms and conditions, *mutatis mutandis*, as those agreed to by the

Accepting Shareholders, all of which terms and conditions are set out in writing and promptly delivered to the Forced Shareholders (the "Drag-Along Offer"),

the Forced Shareholders shall be required to sell all of their Specified Securities to the Purchaser in accordance with the terms and conditions of the Drag Along Offer except that the purchase price shall be distributed among the selling shareholders in accordance with paragraphs (b) and (c) of this Section B.1(iii).

(f) Upon acceptance of a Drag Along Offer the Accepting Shareholders shall forthwith provide notice in writing (the "Drag Along Notice") to the holders of Equity Securities which are subject to the Drag Along Offer (the "Other Securityholders") which specifies the name of the Purchaser, the purchase prices, the intended closing date and place and all other material terms and conditions of the intended sale. For purposes of this Section, "Equity Securities" shall mean: (A) shares of any class in the share capital of the Corporation or any other security of the Corporation that carries the residual right to participate in the earnings of the Corporation and, on liquidation, dissolution or winding-up, in the assets of the Corporation, whether or not the security carries voting rights; (B) any Options (as defined below); or (C) any Convertible Securities (as defined below).

(iv) Conversion. The holders of the Series A Preferred Stock shall have conversion rights as follows:

(a) *Right to Convert*. Each share of Series A Preferred Stock shall be convertible, in whole or in part, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock equal to the Conversion Rate, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion in accordance with paragraph (c) of this Section B.1(iv). The Conversion Rate at which shares of Common Stock shall be deliverable upon conversion of shares of the Series A Preferred Stock shall initially be one. Such initial Conversion Rate shall be adjusted as hereinafter provided.

(b) *Automatic Conversion*. Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the then-effective Conversion Rate and such shares may not be reissued by the Corporation as shares of such series upon the earlier of (A) the closing of the sale of the Corporation's Common Stock in a firm commitment, underwritten public offering registered under the *Securities Act* of 1933, as amended (the "Securities Act"), other than a registration relating solely to a transaction under Rule 145 under the *Securities Act* (or any successor thereto), at a public offering price (prior to underwriters' discounts and expenses) equal to or exceeding \$1.662808 (as adjusted for any stock dividends, combinations, reverse stock splits, stock splits, recapitalizations, reorganizations, reclassifications or other similar event with respect to shares), and in which the aggregate proceeds to the Corporation and/or any selling shareholders (prior to underwriters' discounts and expenses) are at least \$25,000,000 (a "Qualified Public Offering"); or (B) prior written approval of the Supermajority Holders.

(c) *Mechanics of Conversion*.

(i) Before any holder of Series A Preferred Stock shall be entitled to convert any of such shares into shares of Common Stock pursuant to paragraph (a) of this Section B.1(iv), such holder shall surrender the certificate or certificates evidencing such shares, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give

written notice to the Corporation at such office of the number of shares that such holder elects to so convert. The Corporation shall, as soon as practicable thereafter (but in any event within 20 business days thereafter), issue and deliver to such holder of Series A Preferred Stock a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and, if applicable, a certificate or certificates representing any such shares of Series A Preferred Stock that are not being so converted (but were otherwise represented by a certificate that included shares that were being so converted). Any such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the certificate or certificates for the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(II) In the event of an automatic conversion pursuant to paragraph (b)(A) of this Section B.1(iv), the conversion may, at the option of any holder tendering shares of Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities. No holder of shares of Series A Preferred Stock shall receive certificates for shares of Common Stock upon such conversion unless and until such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock. Until surrendered as provided above, each certificate previously representing shares of Series A Preferred Stock shall be deemed for all corporate purposes to represent the number of shares of Common Stock resulting from such automatic conversion.

(d) *Adjustments to Conversion Rate for Certain Diluting Issues.*

(I) *Special Definitions.* For purposes of this Section B.1, the following definitions apply:

(1) "Options" shall mean options, warrants and rights entitling the holders thereof to subscribe for, purchase or otherwise acquire Common Stock, Preferred Stock or Convertible Securities.

(2) "Original Issue Date" shall mean the first date on which a share of Series A Preferred Stock was issued by the Corporation.

(3) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock or Series A Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to subparagraph (d)(III) of this Section B.1(iv), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable in any of the following transactions:

(A) upon conversion of shares of Series A Preferred Stock;

(B) grants to officers, directors or employees of, or consultants or advisers to, the Corporation pursuant to stock option or stock purchase plans,

employment agreements, consulting agreements, warrants or agreements, which grants are on terms from time to time approved by the Corporation's Board of Directors;

(C) to financial institutions or lessors pursuant to commercial credit arrangements, equipment financings, leasing transactions or similar transactions not entered into solely or primarily for capital raising purposes, each of which is approved by the Corporation's Board of Directors, which approval must include approval of the Supermajority Holders (if the aggregate shares of the type described in this clause (C) issued since the Original Issue Date are 1% or more of the Corporation's total equity capital on a fully-diluted basis) or approval of the Series A Directors (if the aggregate shares of the type described in this clause (C) issued since the Original Issue Date are less than 1% of the Corporation's total equity capital on a fully-diluted basis);

(D) in connection with bona fide business acquisitions or other strategic transactions, each of which are approved by the Corporation's Board of Directors, which approval must include approval of the Supermajority Holders;

(E) upon the exercise of any Options issued and outstanding as of the Original Issue Date;

(F) as a dividend or distribution on shares of the Series A Preferred Stock; and

(G) for which adjustment of the Conversion Rate is made pursuant to paragraph (e) or paragraph (f) of this Section B.1(iv).

(5) "Person" shall mean any individual, partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, trust, trustee, executor, administrator, or other legal personal representatives, regulatory body or agency, government or governmental agency, authority or entity howsoever designated or constituted.

(6) "Transfer" shall include any sale, exchange, assignment, gift, bequest, disposition, mortgage, charge, pledge, encumbrance, grant of security interest or other arrangement by which possession, legal title or beneficial ownership passes from one Person to another, or to the same Person in a different capacity, whether or not voluntary and whether or not for value, and any agreement to effect any of the foregoing; and the words "Transferred", "Transferring", "Transferor", "Transferee" and similar words have corresponding meanings.

(II) *No Adjustment of Conversion Rate.* Any provision of this Certificate of Incorporation to the contrary notwithstanding, no adjustment in the Conversion Rate shall be made in respect of the issuance of Additional Shares of Common Stock or deemed issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to subparagraph (d)(V) of this Section B.1(iv)) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Original Issue Price (as adjusted for any stock dividends, combinations, reverse stock splits, stock splits, recapitalizations, reorganizations, reclassifications or other similar event with respect to shares).

(III) *Deemed Issuance of Additional Shares of Common Stock.* Except as otherwise excluded under Section B.1(iv)(d)(I)(4), in the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or

shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options for Convertible Securities, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) no further adjustments in the Conversion Rate shall be made upon the subsequent issue of such Convertible Securities where an adjustment to the Conversion Rate had been made on the record date, or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities, in each case where an adjustment to the Conversion Rate had been made on the record date or issue date;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or decrease or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Rate computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the Conversion Rate shall affect Common Stock previously issued upon conversion of the Series A Preferred Stock);

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

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

(B) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to subparagraph (d)(V) of this Section B.1(iv)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(4) no readjustment pursuant to clause (2) or (3) above shall have the effect of increasing the Conversion Rate to an amount which exceeds the lower of (a) the Conversion Rate on the original adjustment date, or (b) the Conversion Rate that resulted from any issuance of Additional Shares of Common Stock, other than those Additional Shares of Common Stock causing such readjustment, between the original adjustment date and such readjustment date;

(5) in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Conversion Rate shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in clause (3) above; and

(6) in the event that any adjustment described in this subparagraph (d)(III) is made, with respect to any Additional Shares of Common Stock that were originally issued (or deemed issued) for a consideration per share equal to or in excess of the Original Issue Price (as adjusted for any stock dividends, combinations, reverse stock splits, stock splits, recapitalizations, reorganizations, reclassifications or other similar event with respect to shares) that, had such adjustment been made prior to such original issue date (or deemed original issue date) would have caused such Additional Shares of Common Stock to be issued for a consideration per share less than the Original Issue Price (as adjusted for any stock dividends, combinations, reverse stock splits, stock splits, recapitalizations, reorganizations, reclassifications or other similar event with respect to shares) then in effect, then such Additional Shares of Common Stock shall be deemed to have been issued as of the date of any such adjustment.

(IV) *Adjustment of Conversion Rate Upon Issuance of Additional Shares of Common Stock.* In the event the Corporation, at any time after the Original Issue Date, shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to subparagraph (d)(III) of this Section B.1(iv)) without consideration or for a consideration per share less than the Original Issue Price (as adjusted for any stock dividends, combinations, reverse stock splits, stock splits, recapitalizations, reorganizations, reclassifications or other similar event with respect to shares), then and in such event, the Conversion Rate shall be increased, concurrently with such issue, in accordance with the following formula:

$$CR = (A * (B+D))/(A*B + C*D)$$

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

(1) CR shall mean the Conversion Rate in effect immediately after such issue of Additional Shares of Common Stock;

(2) "A" shall mean the Original Issue Price per share (as adjusted for any stock dividends, combinations, reverse stock splits, stock splits, recapitalizations, reorganizations, reclassifications or other similar event with respect to shares);

(3) "B" shall mean the fully-diluted number of shares of Common Stock outstanding immediately prior to such issue;

(4) "C" shall mean the consideration per share to be paid for the Additional Shares of Common Stock issued in such transaction; and

(5) “D” shall mean the number of such Additional Shares of Common Stock issued in such transaction.

(V) *Determination of Consideration.* For purposes of paragraph (d) of this Section B.1(iv), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) *Cash and Property.* Such consideration shall:

(A) 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 or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the Fair Market Value thereof at the time of such issue; and

(C) 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 (A) and (B) above.

(2) *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 subparagraph (d)(III) of this Section B.1(iv), relating to Options and Convertible Securities shall be determined by dividing:

(A) 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 designed to protect against dilution) 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

(B) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

(e) *Adjustments to Conversion Rates for Stock Dividends and for Combinations or Subdivisions of Common Stock.* In the event that the Corporation at any time or from time to time after the Original Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in shares of Common Stock or in any right to acquire shares of Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in shares of Common Stock or in any right to acquire shares of Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Conversion Rate in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that the Corporation shall declare or pay, without consideration, any

dividend on the Common Stock payable in any right to acquire shares of Common Stock for no consideration, then the Corporation shall be deemed to have made a dividend payable in shares of Common Stock in an amount equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

(f) *Adjustments for Reclassification and Reorganization.* If the Common Stock issuable upon conversion of the Series A Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in paragraph (e) of this Section B.1(iv) above or a merger or other reorganization referred to in paragraph (b) of Section B.1(iii) above), the Conversion Rate then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the Series A Preferred Stock shall thereafter be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been received by the holders upon conversion of the Series A Preferred Stock immediately before that change.

(g) *No Impairment.* The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance of performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section B.1(iv) and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rate against impairment.

(h) *Certificates as to Adjustments.* Upon the occurrence of each adjustment or readjustment of the Conversion Rate pursuant to this Section B.1(iv), the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock a certificate executed by the Corporation's President or Chief Executive Officer setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any such holder, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Rate at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series A Preferred Stock.

(i) *Notices of Record Date.* In the event that the Corporation shall propose at any time prior to the conversion of all outstanding shares of the Series A Preferred Stock: (I) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (II) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (III) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (IV) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind-up; then, in connection with each such event, the Corporation shall send to the holders of Series A Preferred Stock:

(1) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the

date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in clauses (I) and (II) above; and

(2) in the case of the matters referred to in clauses (III) and (IV) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

(j) *Issue Taxes.* The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of Series A Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(k) *Reservation of Stock Issuable Upon Conversion.* The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to this Certificate of Incorporation.

(l) *Fractional Shares.* No fractional share shall be issued upon the conversion of any share or shares of Series A Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the Fair Market Value of such fraction on the date of conversion.

(m) *Notices.* Any notice required by the provisions of this Section B.1(iv) to be given to the holders of shares of Series A Preferred Stock, unless waived by the holder, shall be deemed given if deposited in the United States mail, postage prepaid, or if sent by facsimile or delivered personally by hand or nationally recognized courier and addressed to each holder of record at such holder's address or facsimile number appearing in the records of the Corporation.

(v) **Voting.**

(a) *Series A Preferred Stock.*

(I) *Special Definition:* For purposes of Section B.1(ii)(b) and Section B.1(v), and in addition to the definitions set forth in paragraph (d) of Section B.1(iv), the following definition applies:

(1) “As-If-Converted Basis” shall mean at any time that all shares of any class in the share capital of the Corporation issued and outstanding at that time which are convertible into Common Stock will be deemed to have been fully converted, in accordance with the rights, privileges, restrictions and conditions attached thereto, into shares of Common Stock and that all shares of Common Stock issuable pursuant to such convertible shares will be deemed to have been issued and to form part of the holdings of the Person(s) entitled to receive such shares of Common Stock.

(II) *Voting of Series A Preferred Stock:* At any meeting of the shareholders of the Corporation, the shares of the Series A Preferred Stock shall be entitled to the number of votes for each such share held that would equal the number of shares of Common Stock issuable upon conversion of such shares on the record date for the meeting. The shares of the Series A Preferred Stock (on an As-If-Converted Basis) and the Common Stock shall vote together as a single class of stock, except where voting separately by class or series is required by the DGCL.

(b) *Supermajority Approval Required.* Without the prior written approval of the Supermajority Holders, the Corporation shall not take any of the following actions:

(i) authorize any action or take or institute proceedings in furtherance of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or other distribution of assets of the Corporation among its shareholders for the purpose of winding-up its affairs;

(ii) authorize any action or take or institute proceedings in furtherance of (a) any Fundamental Change, (b) amalgamation, merger, plan of arrangement or consolidation with any other entity; or (c) the acquisition by the Corporation or any subsidiary of any securities, or substantially all of the assets, of any entity;

(iii) approve any change in the rights or preferences of the any class of shares of the Corporation’s stock; increase or decrease the total number of authorized shares of Series A Preferred Stock, Common Stock or any other shares of the Corporation’s stock; or otherwise amend or alter any provision of the Certificate of Incorporation of the Corporation;

(iv) declare or pay any dividends, or otherwise effect any distributions, on the securities of the Corporation;

(v) adopt any stock option or stock purchase plan arrangement, or amend any existing stock option plan or stock purchase plan or arrangement to increase the number of Options or other securities available for issuance thereunder;

(vi) redeem or acquire any securities of the Corporation other than (x) pursuant to Section B.1(ii) of this Article Fourth, or (y) the repurchase of shares of Common Stock owned by an employee, director or consultant to the Corporation pursuant to an arrangement which was previously approved by the Board of Directors;

(vii) authorize or issue, or obligate itself to authorize or issue, any other equity security having any preference or priority over, or ranking senior to or on parity with, the Series A Preferred Stock; or

(viii) engage in any recapitalization or reorganization of the Corporation or otherwise reclassify any shares of Common Stock, Series A Preferred Stock or any other securities of the Corporation, or engage in any financing requiring the granting of security over any of the material assets of the Corporation (including its intellectual property).

C. **Terms of Common Stock.** The voting powers and relative, participating, optional and other special rights of the Common Stock, and the qualifications, limitations and restrictions thereof, are as follows:

1. **Voting Rights and Powers.** Except as provided in the DGCL, the holders of shares of the Common Stock shall be entitled to one vote per each share of Common Stock and shall vote together as a single class (with the holders of Series A Preferred Stock entitled to vote together with the holders of the shares of Common Stock) on all matters as to which such holders are entitled to vote.

2. **Dividend Rights.** Cash or other types of dividends (other than fixed dividends) may be declared and paid upon the Common Stock so long as (i) there are no Series A Preferred Stock or other securities ranking prior to the Common Stock upon dissolution, liquidation or winding up of the Corporation outstanding or (ii) such dividends are declared and paid upon the Series A Preferred Stock at the same time and in the same amount as the Common Stock. In determining the amount of the dividend per share, the Series A Preferred Stock shall be on an As-If-Converted Basis. Thereafter, dividends may be declared and paid upon the Common Stock in such amounts and at such times as the Board of Directors may determine. Funds otherwise legally available for the payment of dividends on the Common Stock shall not be restricted or reduced by reason of there being any excess of the aggregate preferential amount of Series A Preferred Stock outstanding over the aggregate par value thereof.

3. **Liquidation Rights.** In the event of any Dissolution Event, after there shall have been paid or set apart for payment of holders of any outstanding shares of Series A Preferred Stock the full preferential amounts to which they are entitled under Section B.1(iii) the remaining assets and funds of the Corporation, if any, 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 of Common Stock held or deemed 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 Event.

4. **Preemptive Rights.** The holders of Common Stock shall have no preemptive rights.

FIFTH. All corporate powers of the Corporation shall be exercised by or under the direction of the Board of Directors except as otherwise provided herein or by applicable law. In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized:

(i) to adopt, amend or repeal By-laws of the Corporation, subject to the right of the shareholders of the Corporation entitled to vote with respect thereto to adopt By-laws and to amend or repeal By-laws made by the Board of Directors; and

(ii) from time to time to determine whether and to what extent, at what time and place, and under what conditions and regulations the accounts and books of the Corporation, or any of them, shall be open to the inspection of any shareholder; and no shareholder shall have any right to inspect any account or book or document of the Corporation except as provided by applicable

law or the By-laws of the Corporation, as authorized by resolution of the shareholders or Board of Directors of the Corporation or as set forth in any agreement among the Corporation and any of its shareholders.

SIXTH. No present or former director or officer of the Corporation or any person acting at the direction of the Board of Directors shall be personally liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director or officer; provided, however, that this Article shall not be deemed to eliminate or limit a director's or officer's liability to the extent provided by applicable law (i) for any breach of the director's or officer's duty of loyalty to the Corporation or its shareholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law; (iii) under Section 174 of Title 8 of the DGCL; or (iv) for any transaction from which the director or officer derived an improper personal benefit. If the DGCL is amended after adoption by the Corporation of this Article to authorize corporate action further eliminating or limiting the personal liability of directors or officers, then the liability of a director or officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Neither the amendment nor the repeal of this Article, nor the adoption of any provision to this Certificate of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise prior to such amendment or repeal of this Article or prior to the adoption of an inconsistent provision.

SEVENTH.

A. Every person who was or is a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person or a person of whom such person is a legal representative is or was a director or officer of the Corporation or is or was serving at the request of the Corporation or for its benefit as a director, officer, employee or agent of any other corporation, or as the representative of the Corporation in a partnership, joint venture, trust or other entity, shall be indemnified and held harmless by the Corporation to the fullest extent legally permissible under the DGCL, as amended from time to time, against all expenses, liabilities and losses (including attorneys' fees, judgments, fines and amounts paid or to be paid in settlement) reasonably paid or incurred by such person in connection therewith. Such right of indemnification shall be a contract right that may be enforced in any manner desired by such person. Such right of indemnification shall include the right to be paid by the Corporation the expenses incurred in defending any such action, suit or proceeding in advance of its final disposition upon receipt of an undertaking by or on behalf of such person to repay such amount if ultimately it should be determined that such person is not entitled to be indemnified by the Corporation under the DGCL. Such right of indemnification shall not be exclusive of any other right which such directors, officers or representatives may have or hereafter acquire and, without limiting the generality of such statement, they shall be entitled to their respective rights of indemnification under any By-law, agreement, vote of shareholders, provision of law or otherwise, as well as their rights under this Article Seventh.

B. The Board of Directors may adopt By-laws from time to time with respect to indemnification to provide at all times the fullest indemnification permitted by the DGCL, as amended from time to time, and may cause the Corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation or for its benefit as a director, officer, employee or agent of any other corporation, or as the representative of the Corporation in a partnership, joint

venture, trust or other entity, against any expense, liability or loss asserted against or incurred by any such person in any such capacity or arising out of any such status, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss.

EIGHTH. Except as otherwise provided in this Certificate of Incorporation, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon shareholders, directors and officers herein are granted subject to this reservation.

NINTH. The number of years the corporation is to continue is perpetual.

TENTH. The number of directors to constitute the Board of Directors shall be seven (7).

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

TWELFTH. Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them, and/or between the Corporation and its shareholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or shareholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the shareholders or class of shareholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the shareholders or class of shareholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the shareholders or class of shareholders, of this Corporation, as the case may be, and also on the Corporation.

THIRTEENTH. Pursuant to Section 122(17) of the DGCL, but except as otherwise set forth in this ARTICLE THIRTEENTH, the Corporation hereby renounces any interest or expectancy of the Corporation or any subsidiary of the Corporation in, or in being offered an opportunity to participate in, any and all business opportunities that are presented to the Investors (as defined in the Shareholders' Agreement) or their affiliates. As used in this ARTICLE THIRTEENTH, the term "Investor Party" shall include each such Investor and any representative or affiliate of such Investor, including a representative or affiliate serving on the Board of Directors, but shall not include any Investor who (or whose representative or affiliate) is otherwise employed by the Corporation. If any such Investor Party acquires knowledge of a potential transaction or matter (other than in connection with service on the Board of Directors) that may be an investment or business opportunity or prospective economic or competitive advantage in which the Corporation could have an interest or expectancy (a "Corporate Opportunity") or otherwise is then exploiting any Corporate Opportunity, the Corporation shall have no interest in, and no expectation that, such Corporate Opportunity be offered to it, any such interest or expectation being hereby

renounced so that the Investor Parties (a) shall have (i) no duty to communicate or present such Corporate Opportunity to the Corporation and (ii) the right to hold any such Corporate Opportunity for the Investor's own account and benefit or to recommend, assign or otherwise transfer such Corporate Opportunity to any individual or entity other than the Corporation, and (b) to the fullest extent permitted by law cannot be, and shall not be, liable to the Corporation or its shareholders for breach of any fiduciary duty as a shareholder or director of the Corporation by reason of the fact that an Investor pursues or acquires such Corporate Opportunity or recommends, assigns or otherwise transfers such Corporate Opportunity to an individual or entity other than the Corporation; provided, however, that each director of the Corporation shall act in good faith and provided further, that nothing in this Article shall change a director's duties or obligations with respect to proprietary or confidential information of the Corporation or prohibit the Corporation from pursuing any Corporate Opportunity. In addition, a Corporate Opportunity shall belong to the Corporation if such Corporate Opportunity is offered to an individual directly in connection with such individual's service as a director of the Corporation.

Signed this 23 day of March 2007.

By: /s/D. Graeme Thomas

Name: D. Graeme Thomas

Title: Chief Executive Officer