

SEVENTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ALIGO, INC.

The undersigned, Emerick Woods and Joyce Kim, hereby certify that:

1. They are the duly elected and acting Chief Executive Officer and Secretary, respectively, of Aligo, Inc., a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on December 8, 1999.
3. The Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

ARTICLE I

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

ARTICLE II

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

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware as the same exists or may hereafter be amended.

ARTICLE IV

(A) **Classes of Stock.** The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 748,031,509 shares, each with a par value of \$0.0001 per share. 420,000,000 shares shall be Common Stock and 328,031,509 shares shall be Preferred Stock.

The first series of Preferred Stock shall be designated "Series A Preferred" and shall consist of 2,112,000 shares. The second series of Preferred Stock shall be designated "Series B Preferred" and shall consist of 16,619,758 shares. The third series of Preferred Stock shall be designated "Series C Preferred" and shall consist of 51,991,461 shares. The fourth series of Preferred Stock shall be designated "Series 1 Preferred" and shall consist of 170,000,000 shares. The fifth series of Preferred Stock shall be designated "Series 2 Preferred" and shall consist of 80,000,000 shares.

(B) **Rights, Preferences and Restrictions of Preferred Stock.** The respective rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred, Series B Preferred, Series C Preferred, Series 1 Preferred and Series 2 Preferred are as set forth below in this Article IV(B).

1. **Dividend Provisions.**

(a) Subject to the rights of series of Preferred Stock which may from time to time come into existence, the holders of shares of Series A Preferred, Series B Preferred, Series C Preferred, Series 1 Preferred and Series 2 Preferred shall be entitled to receive Distributions, out of any assets legally available therefor, prior and in preference to any declaration or payment of any Distribution on the Common Stock of the Corporation, at the rate of (i) \$0.04 per share per annum on each outstanding share of Series A Preferred, (ii) \$0.0544 per share per annum on each outstanding share of Series B Preferred, (iii) \$0.0163 per share per annum on each outstanding share of Series C Preferred, (iv) \$0.0062 per share per annum on each outstanding share of Series 1 Preferred, (v) \$0.0163 share per annum on each outstanding share of Series 2 Preferred payable quarterly when, as and if declared by the Board of Directors. Such Distributions shall not be cumulative. The holders of Series B Preferred, Series C Preferred, Series 1 Preferred and Series 2 Preferred shall also be entitled to participate pro-rata in any Distributions paid on the Common Stock on an as-converted basis. No other Distribution shall be made on the Series A Preferred (other than as set forth in subsection (i) of this Section 1(a)) or Common Stock until an equal or greater Distribution (on an as-converted basis) has been paid on or declared and set apart for the shares of Series B Preferred, Series C Preferred, Series 1 Preferred and Series 2 Preferred then outstanding. No other Distributions shall be made on any Junior Securities (other than as set forth in subsections (i) and (ii) of this Section 1(a)) until an equal or greater Distribution (on an as-converted basis) has been paid on or declared and set apart for the shares of Series 1 Preferred and Series 2 Preferred then outstanding. "Junior Securities" means any capital stock or other equity securities of the Corporation, except for the Series 1 Preferred and Series 2 Preferred.

(b) "Distribution" shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase at the initial issuance price for such shares (or if lower, the then current fair market value of such shares), (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, and (iii) any other repurchase or redemption of capital stock of the Corporation approved by a majority of the holders of the Preferred Stock of the Corporation, voting together as a single class on an as-converted to Common Stock basis.

(c) As authorized by Section 402.5(c) of the California Corporations Code, if Section 502 or Section 503 of the California Corporations Code is applicable to a payment made by the Corporation then such applicable section or sections shall not apply if such payment is a payment made by the Corporation in connection with (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, and (iii) any other repurchase or redemption of Common Stock or Preferred Stock approved by the holders of at least a majority of the then outstanding Preferred Stock of the Corporation, voting together as a single class on an as-converted to Common Stock basis. Notwithstanding anything contained herein, this Section 1(c) shall not be an admission that the Corporation is subject to any section of the California Corporations Code.

2. **Liquidation.**

(a) **Series 1 Preferred Preference and Series 2 Preferred Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of such other series of Preferred Stock that may from time to time come into existence, the holders of the Series 1 Preferred and Series 2 Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Junior Securities by reason of their ownership thereof, an amount per share equal to: (i) \$0.0620 for each share of Series 1 Preferred then held by them and (ii) \$0.2032 for each share of Series 2 Preferred then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series 1 Preferred and Series 2 Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of such other series of Preferred Stock that may from time to time come into existence, the entire remaining assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series 1 Preferred and Series 2 Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) **Series C Preferred Preference.** Upon the completion of the distribution required by Section 2(a), in the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of such other series of Preferred Stock that may from time to time come into existence, the holders of the Series C Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Series A Preferred, Series B Preferred and Common Stock by reason of their ownership thereof, an amount per share equal to \$0.2032 for each share of Series C Preferred then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series C Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of such other series of Preferred Stock that may from time to time come into existence, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series C Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive.

(c) **Series A Preferred Preference and Series B Preferred Preference.** Upon the completion of the distribution required by Section 2(a) and Section 2(b) above, and in the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of such other series of Preferred Stock that may from time to time come into existence, the holders of the Series A Preferred and Series B Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to: (i) \$0.50 for each share of Series A Preferred then held by them and (ii) \$0.68 for each share of Series B Preferred then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred and Series B Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of such other series of Preferred Stock that may from time to time come into existence, the entire remaining assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred and Series B Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive.

(d) **Remaining Assets.** Upon the completion of the distributions required by Section 2(a) and Section 2(b) above and any other distribution that may be required with respect to such other series of Preferred Stock that may from time to time come into existence, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among the holders of the Common Stock pro rata based on the number of shares of Common Stock held by each.

(e) **Certain Acquisitions.**

(i) **Deemed Liquidation.** For purposes of this Section 2, a liquidation, dissolution, or winding up of the Corporation shall be deemed to occur (A) if the Corporation shall, in a transaction or series of transactions, sell, convey, or otherwise dispose of all or substantially all of its property or business (including a perpetual, irrevocable, exclusive (even as to the Corporation), worldwide license of substantially all of the Corporation's intellectual property), merge with or into or consolidate with any other corporation (other than a wholly-owned subsidiary corporation), or (B) if there occurs any sale, transfer or issuance or series of sales, transfers and/or issuances of shares of the Corporation's capital stock by the Corporation or the holders thereof as a result of which the holders of the Corporation's outstanding capital stock possessing the voting power to elect a majority of the Corporation's Board of Directors immediately prior to such sale or issuance cease to own the Corporation's outstanding capital stock possessing the voting power to elect a majority of the Corporation's Board of Directors; provided however, that this Section 2(d)(i) shall not apply (1) to a merger effected exclusively for the purpose of changing the domicile of the Corporation, (2) to an equity financing in which the Corporation is the surviving corporation, or (3) to a transaction in which the stockholders of the Corporation immediately prior to the transaction own 50% or more of the voting power of the surviving corporation following the transaction or (4) the Series 2 Preferred Financing (as defined below) and related transactions.

(ii) **Valuation of Consideration.** In the event of a deemed liquidation as described in Section 2(d)(i) above, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

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

(1) If traded on a securities exchange or The Nasdaq Stock Market, the value shall be based on a formula approved, in good faith, by the Board of Directors and derived from the closing prices of the securities on such exchange or Nasdaq over a specified time period;

(2) If actively traded over-the-counter, the value shall be based on a formula approved, in good faith, by the Board of Directors and derived from the closing prices of the securities on such exchange or Nasdaq over a specified time period; and

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

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 2(d)(ii)(A) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

(C) Notwithstanding the foregoing, if the consideration received by the Corporation or the proceeds to be distributed to holders of shares of the Corporation's capital stock is other than cash and the merger agreement, asset purchase agreement or other definitive transaction document entered into with respect to such deemed liquidation, dissolution or winding up specifies an alternative method of determining the value of such consideration or proceeds, then, for the purpose of this Section 2(d)(ii), the value of such consideration or proceeds shall be determined in

accordance with the method set forth in such merger agreement, asset purchase agreement or other definitive transaction document, as applicable.

(iii) **Notice of Transaction.** The Corporation shall give each holder of record of Preferred Stock written notice of such deemed liquidation as described in Section 2(d)(i) above not later than ten (10) days prior to the stockholders' meeting called to approve such transaction, or ten (10) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than ten (10) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

(iv) **Effect of Noncompliance.** In the event the requirements of this Section 2(d) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(d)(iii) hereof.

3. **Redemption.** The Preferred Stock is not redeemable.

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

(a) **Right to Convert.** Subject to Section 4(c), each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) \$0.50 in the case of the Series A Preferred, (ii) \$0.68 in the case of the Series B Preferred, (iii) \$0.2032 in the case of the Series C Preferred, (iv) \$0.0778 in the case of the Series 1 Preferred, and (v) \$0.2032 in the case of the Series 2 Preferred by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial "Conversion Price" per share shall be \$0.382117 for shares of Series A Preferred, \$0.490585 for shares of Series B Preferred, \$0.2032 for shares of Series C Preferred, \$0.0778 for shares of Series 1 Preferred, and \$0.2032 for shares of Series 2 Preferred. Such initial Conversion Price shall be subject to adjustment as set forth in Section 4(d) below. No conversion pursuant to this Section 4 shall effect the obligation of the Corporation to pay any declared but unpaid dividends.

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (i) except as provided below in Section 4(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "**Securities Act**"), the public offering price of which is not less than \$0.50 per share (appropriately adjusted for any stock split, dividend, combination or other recapitalization) and which results in aggregate cash proceeds to the Corporation of \$25,000,000

(net of underwriting discounts and commissions) or (ii) the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of Preferred Stock, voting together as a class.

(c) **Mechanics of Conversion.** Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such series of 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 as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act the conversion may, at the option of any holder tendering such 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 Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

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

(i) **Issuance of Additional Stock below Purchase Price.** If the Corporation shall issue, after the date on which this Seventh Amended and Restated Certificate of Incorporation is filed with the Secretary of State of the State of Delaware (the "Filing Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i).

(A) **Adjustment Formula.** Whenever the Conversion Price is adjusted pursuant to this Section 4(d)(i), the new Conversion Price shall be determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall include outstanding warrants, outstanding options, and other securities convertible into or exercisable or exchangeable for Common Stock and whether vested or unvested.

(B) **Definition of "Additional Stock".** For purposes of this Section 4(d)(i), "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Filing Date other than:

(1) Common Stock issued pursuant to stock dividends, stock splits or similar transactions, as described in Section 4(d)(ii) hereof;

(2) Shares of Common Stock issuable or issued to employees, consultants or directors of the Corporation directly or pursuant to (i) a stock option plan or restricted stock plan which is approved by the Board of Directors of the Corporation prior to the date hereof grants or issuances under which are approved by the Board of Directors of the Corporation (net of repurchases of shares held by employees upon termination of employment), (ii) a stock option plan or restricted stock plan which is approved by the Board of Directors of the Corporation, including the affirmative vote of the Preferred Directors (as defined below), grants or issuances under which are approved by the Board of Directors of the Corporation, or (iii) other compensatory arrangement approved by the Board of Directors of the Corporation, including the affirmative vote of the Preferred Directors;

(3) Capital stock, or options or warrants to purchase capital stock, issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings, commercial property lease transactions or similar transactions, provided that such equity grants are not the primary purpose of such transactions and that such issuance is approved by the Board of Directors, including the affirmative vote of the Preferred Directors;

(4) Not including issuances subject to clause 4(d)(i)(B)(2) above, shares of Common Stock or Preferred Stock issuable upon exercise of option, warrants, or other convertible securities, outstanding as of the date of this Amended and Restated Certificate of Incorporation;

(5) Capital stock or warrants or options to purchase capital stock issued as consideration for any bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board of Directors of the Corporation, provided that such equity grants are not the primary purpose of such transactions and that such issuance is approved by the Board of Directors, including the affirmative vote of the Preferred Directors;

(6) Shares of Common Stock issued or issuable upon conversion of the Preferred Stock;

(7) Shares of Common Stock issued or issuable in a public offering prior to or in connection with which all outstanding shares of Preferred Stock will be converted to Common Stock;

(8) Capital stock issued or issuable to an entity as a component of any business relationship with such entity also involving a material marketing, distribution, product development, supply and/or technology licensing arrangement, provided that such equity grants are not the primary purpose of such transactions and that such issuance is approved by the Board of Directors, including the affirmative vote of the Preferred Directors;

(9) Shares of Common Stock issued or issuable pursuant to a written waiver of this Section 4(d)(i) granted by the holders representing at least two-thirds of the then outstanding shares of Preferred Stock (voting together as a single class) the Conversion Price for which would otherwise be adjusted pursuant to this Section 4(d)(i) as a result of such transaction; and

(10) Shares of Series 2 Preferred issuable pursuant to a warrant in the name of Silicon Valley Bank, provided that such issuance is approved by the Board of Directors, including the affirmative vote of the Preferred Directors;

(11) Shares of Common Stock or Series 1 Preferred Stock issued in connection with Section 8 of this Certificate of Incorporation; and

(12) Shares of Series 1 Preferred and Series 2 Preferred issued in connection with the Series 2 Preferred Financing;

(C) **No Fractional Adjustments.** No adjustment of the Conversion Price for the Preferred Stock shall be made in an amount less than one tenth of cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

(D) **Determination of Consideration.** In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors irrespective of any accounting treatment.

(E) **Deemed Issuances of Common Stock.** In the case of the issuance (whether before, on or after the Filing Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 4(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Section 4(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

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

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable

securities, other than a change resulting from the antidilution provisions thereof, the Conversion Price of each of the Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of each series of Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities; however, in no case shall the readjustment have the effect of increasing the Conversion Price of the Preferred Stock to an amount which exceeds the lower of (i) the Conversion Price for the applicable series of Preferred Stock, as applicable, immediately prior to the original adjustment date, or (ii) the Conversion Price for the applicable series of Preferred Stock, as applicable, that would have resulted from any issuance of Additional Shares between the original adjustment date and such readjustment date.

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

(F) **No Increased Conversion Price.** Notwithstanding any other provisions of this Section 4(d)(i), except to the limited extent provided for in Sections 4(d)(i)(E)(3) and 4(d)(i)(E)(4), no adjustment of the Conversion Price pursuant to this Section 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) **Stock Splits and Dividends.** In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "**Common Stock Equivalents**") without payment of any consideration by such holder for the additional shares of Common Stock or Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each of the Series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(E) as provided in Section 4(d)(iii) below.

(iii) **Reverse Stock Splits.** If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for

each of the Series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

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

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

(g) **No Impairment.** The Corporation will not, by amendment of its Certificate of Incorporation (except in accordance with applicable law) or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or 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 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment.

(h) **No Fractional Shares and Certificate as to Adjustments.**

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded down to the nearest whole share. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock of each holder at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined in good faith by the Board of Directors) on the date of conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Preferred Stock a certificate setting forth such adjustment or readjustment

and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment and in each case the factual basis therefor, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

(i) **Notices of Record Date.** In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Preferred Stock, at least fifteen (15) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

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

(k) **Notices.** Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

5. **Voting Rights; Directors.**

(a) **General.** The holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred, Series B Preferred, Series C Preferred, Series 1 Preferred or Series 2 Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) **Board of Directors.** Notwithstanding the foregoing, so long as an aggregate of 25,000,000 shares of Preferred Stock are outstanding:

(i) The holders of the Preferred Stock, voting together as a separate class, shall be entitled to elect four directors of the Corporation (the "Preferred Directors");

(ii) The holders of the Preferred Stock and the holders of the Common Stock, voting together as a single class, shall be entitled to elect two directors of the Corporation (the "At Large Directors"); and

(v) Notwithstanding any bylaw provision to the contrary, the stockholders entitled to elect a particular director shall be entitled to remove such director or to fill a vacancy in the seat formerly held by such director, all in accordance with the applicable provisions of the Corporations Code of the State of Delaware.

6. Protective Provisions.

(a) Subject to the rights of series of Preferred Stock which may from time to time come into existence, so long as at least 25,000,000 shares of Preferred Stock in the aggregate are outstanding (as adjusted for stock splits, stock dividends or recapitalizations), the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a two-thirds of the then outstanding shares of Preferred Stock, voting together as a class:

(i) liquidate, dissolve or wind-up the Corporation, or effect a transaction described in Section 2(d)(i) above or merge or consolidate with any person or permit any subsidiary to merge or consolidate with any person (other than a merger of a wholly-owned subsidiary with another wholly-owned subsidiary or a merger of the Corporation with a wholly-owned subsidiary);

(ii) create any new series or class or shares having rights, privileges, preferences superior to or on a parity with that of the outstanding Preferred Stock;

(iii) amend or repeal any provision of, or add any provision to, the Corporation's Certificate of Incorporation or Bylaws to change the rights of any series of Preferred Stock, or increase or decrease the number of authorized shares of any series of the Preferred Stock or Common Stock;

(iv) change the authorized number of Directors;

(v) create (by reclassification or otherwise) any security, or create any option, warrant, bonds, notes or other obligations convertible into, exchangeable for or having option rights to purchase shares of stock, with any rights, privileges or preferences superior to or on a parity with that of the outstanding Preferred Stock; or

(vi) declare or pay any Distribution, or redeem, pay into or set aside for a sinking fund for such purpose.

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

8. **Special Mandatory Conversions.**

(a) **Special Definitions.** For purposes of Article IV, the following definitions shall apply:

(i) **"Series 2 Preferred Financing"** shall mean any transaction or series of related transactions of the Corporation whereby the Corporation shall issue shares of Series 2 Preferred Stock for sale in at least two closings, the First Closing and the Rights Offering Closing;

(ii) **"First Closing"** shall mean the initial closing of the Series 2 Preferred Financing which shall take place on or around May 8, 2006, or such other date as the Corporation and the investors participating in such First Closing shall agree; and

(iii) **"Rights Offering Closing"** shall mean the first closing to occur in the Series 2 Preferred Financing after the First Closing, which shall take place on such date as shall be approved by the Corporation and the investors participating in the Rights Offering Closing, but in any event shall occur no later than 60 days following the First Closing.

(b) **Series 2 Preferred Financing(s).** In the event that:

(i) the Corporation initiates the Series 2 Preferred Financing;

(ii) the Board of Directors of the Corporation determines or has determined (with votes of interested directors to be effective for purposes of this provision) that it is in the best interests of the Corporation for all the holders of the then outstanding shares of Preferred Stock (collectively, the **"Existing Series Preferred"**) to participate in the Series 2 Preferred Financing and determines or has determined the targeted aggregate dollar amount (the **"Aggregate Investment Amount"**) to be invested by all holders of the Existing Series Preferred;

(iii) the Corporation delivers or has delivered a written notice (a **"Notice"**) to the holders of the Existing Series Preferred (1) stating the Corporation's bona fide intention to consummate the Series 2 Preferred Financing, (2) indicating the number of shares of Series 2 Preferred to be offered, (3) indicating the price and terms upon which it proposes to offer such shares of Series 2 Preferred, (4) identifying the Pro Rata Share (as defined below) of the Aggregate Investment Amount of each holder of the Existing Series Preferred, and (5) offering each holder of the Existing Series Preferred the right to purchase such holder's Pro Rata Share of the Aggregate Investment Amount at the First Closing or the Rights Offering Closing;

(iv) a holder of Existing Series Preferred does not acquire its full Pro Rata Share of the Aggregate Investment Amount at the First Closing or the Rights Offering Closing (such holder, a **"Non Participating Holder"**), then, automatically and without further action on the part of such Non Participating Holder, all of such Non Participating Holder's shares of Existing Series Preferred shall be converted effective immediately upon the consummation of the Rights Offering Closing into shares of Common Stock at the conversion rate in effect immediately prior to the First Closing Date for such Non Participating Holder's Existing Series Preferred; provided, however that, in the case of Existing Series Preferred that are Series B Preferred or Series C Preferred the conversion rate shall be determined based on a Conversion Price of \$0.9917 and \$0.4064 per share of Series B Preferred and Series C Preferred, respectively. Upon conversion into Common Stock pursuant to this Section 8(b), the authorized shares of Existing Series Preferred so converted shall be canceled and not subject to reissuance.

(c) "Pro Rata Share" for the purposes of this Section 8 shall mean that proportion that the number of shares of Existing Series Preferred issued and held by such holder bears to the total number of Existing Series Preferred outstanding immediately prior to the First Closing (on an as-converted into Common Stock basis). For purposes of determining whether a particular holder has acquired its Pro Rata Share of the Aggregate Investment Amount under this Section 8(c), amounts purchased in a Series 2 Preferred Financing by affiliates of the particular holder who qualify to participate in the Rights Offering Closing that are in excess of such affiliate's Pro Rata Share (if any) of the Aggregate Investment Amount shall be included, provided that, in each case, prior to the consummation of the Series 2 Preferred Financing, the Corporation is notified of such affiliation and the amount of such affiliate's investment in the Series 2 Preferred Financing that is to be allocated to the particular holder hereunder; and provided, further, that any such allocations shall not be included in determining whether any other person (including such affiliate) has acquired any of its Pro Rata Share of the Aggregate Investment Amount.

(d) The holder of any shares of Existing Series Preferred (as applicable) converted pursuant to this Section 8 shall deliver to the Corporation during regular business hours at the office of any transfer agent of the Corporation for such series of Preferred Stock, or at such other place as may be designated by the Corporation, the certificate or certificates representing the shares so converted, duly endorsed or assigned in blank or to the Corporation. As promptly thereafter as is practicable, the Corporation shall issue and deliver to such holder, at the place designated by such holder, a certificate or certificates for the number of full shares of the Common Stock or Preferred Stock, as applicable, to which such holder is entitled. The person in whose name the certificate for such shares of Common Stock or Preferred Stock, as applicable, is to be issued shall be deemed to have become a shareholder on the effective date of the conversion of the Existing Series Preferred (as applicable), unless the transfer books of the Corporation are closed on that date, in which case such person shall be deemed to have become a shareholder of record on the next succeeding date on which the transfer books are open.

(e) Restrictions on Transfer. No holder of Existing Series Preferred shall transfer shares of Existing Series Preferred during the period commencing on the effective date of the Notice and ending on the date of the Rights Offering Closing unless such transferee (the "Transferee") executes and delivers to the Corporation a written notice in which the Transferee acknowledges receipt of the Notice and the application of Section 8 to the shares of Existing Series Preferred to be transferred to the Transferee and further agrees to be bound by Section 8 in respect of such shares of Existing Series Preferred (the "Transferred Preferred"); provided, however, that the foregoing restriction shall not be applicable to transfers of Existing Series Preferred to the Corporation in exchange for shares of the Corporation's capital stock. The Pro Rata Share of a Transferee for purposes of this Section 8 shall be determined in accordance with Section 8(c), taking into account the Transferred Preferred acquired by such Transferee. The Pro Rata Share of a holder of Existing Series Preferred determined under Section 8 shall be appropriately adjusted to reflect the transfer to a Transferee of such holder's shares of Existing Series Preferred hereunder.

(f) Reclassification of Preferred Stock. Notwithstanding anything to the contrary contained herein, immediately following the Rights Offering Closing and contingent upon there then being no outstanding shares of Series A Preferred, Series B Preferred and Series C Preferred each then authorized share of Series A Preferred, Series B Preferred and Series C Preferred shall be cancelled.

(C) Common Stock.

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be

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

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

3. **Redemption.** The Common Stock is not redeemable.

4. **Voting Rights.** Each holder of Common Stock shall have the right to one vote per share of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. 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 stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law.

ARTICLE V

Subject to the applicable provisions of this Certificate of Incorporation, the Board of Directors of the Corporation is expressly authorized to make, alter or repeal Bylaws of the Corporation.

ARTICLE VI

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

ARTICLE VII

(A) To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, 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.

(B) The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

(C) Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision."

* * *

The foregoing Amended and Restated Certificate of Incorporation has been duly adopted by this corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

Executed at San Francisco, California, on May 8, 2006.



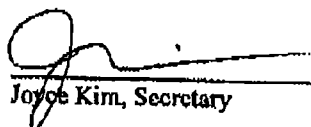
Emerick Woods, Chief Executive Officer

Joyce Kim, Secretary

The foregoing Amended and Restated Certificate of Incorporation has been duly adopted by this corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

Executed at San Francisco, California, on May 1, 2006.

Emerick Woods, Chief Executive Officer



Joyce Kim, Secretary