

FIFTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
ALIEN TECHNOLOGY CORPORATION

Alien Technology Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Company"), certifies that:

A. The name of the Company is Alien Technology Corporation. The Company's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on September 1, 2004.

B. This Fifth Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and restates, integrates and further amends the provisions of the Company's Fourth Amended and Restated Certificate of Incorporation.

C. The text of the Fourth Amended and Restated Certificate of Incorporation is amended and restated to read as set forth in Exhibit A attached hereto.

IN WITNESS WHEREOF, Alien Technology Corporation has caused this Fifth Amended and Restated Certificate of Incorporation to be signed by Robert Eulau, a duly authorized officer of the Company, on October 3, 2006.

/s/ Robert Eulau
Robert Eulau
Chief Executive Officer

EXHIBIT A

ARTICLE I

The name of this corporation is Alien Technology Corporation (the "Company").

ARTICLE II

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

ARTICLE III

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

ARTICLE IV

1. Authorized Stock.

(a) The Company is authorized to issue two classes of stock, designated "Common Stock" and "Preferred Stock", respectively. The total number of shares which the Company is authorized to issue is 429,459,348 shares, par value \$0.001 per share. The number of shares of Common Stock which the Company is authorized to issue is 200,000,000 shares. The number of shares of Preferred Stock which the Company is authorized to issue is 229,459,348 shares, 998,274 of which shall be designated "Series A Preferred Stock" (hereafter, the "Series A Preferred"), 2,681,400 of which shall be designated "Series B Preferred Stock" (hereafter, the "Series B Preferred"), 6,900,000 of which shall be designated "Series C Preferred Stock" (hereafter, the "Series C Preferred"), 27,000,000 of which shall be designated "Series D Preferred Stock" (hereafter, the "Series D Preferred"), 15,000,000 of which shall be designated "Series E Preferred Stock" (hereafter, the "Series E Preferred"), 26,500,000 of which shall be designated "Series F Preferred Stock" (hereafter, the "Series F Preferred"), 11,150,000 of which shall be designated "Series G Preferred Stock" (hereafter, the "Series G Preferred"), 17,000,000 of which shall be designated "Series H Preferred Stock" (hereafter, the "Series H Preferred" and together with the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series D Preferred, the Series E Preferred, the Series F Preferred and the Series G Preferred collectively, the "Junior Preferred Stock"), 998,274 of which shall be designated "Series A-1 Preferred Stock" (hereafter, the "Series A-1 Preferred"), 2,681,400 of which shall be designated "Series B-1 Preferred Stock" (hereafter, the "Series B-1 Preferred"), 6,900,000 of which shall be designated "Series C-1 Preferred Stock" (hereafter, the "Series C-1 Preferred"), 27,000,000 of which shall be designated "Series D-1 Preferred Stock" (hereafter, the "Series D-1 Preferred"), 15,000,000 of which shall be designated "Series E-1 Preferred Stock" (hereafter, the "Series E-1 Preferred"), 26,500,000 of which shall be designated "Series F-1 Preferred Stock" (hereafter, the "Series F-1 Preferred"), 11,150,000 of which shall be designated "Series G-1 Preferred Stock" (hereafter, the "Series G-1 Preferred"), 17,000,000 of which shall be designated "Series H-1 Preferred Stock" (hereafter, the

"Series H-1 Preferred" and together with the Series A-1 Preferred, the Series B-1 Preferred, the Series C-1 Preferred, the Series D-1 Preferred, the Series E-1 Preferred, the Series F-1 Preferred and the Series G-1 Preferred collectively, the "Senior Preferred Stock") and 15,000,000 of which shall be designated "Series I Preferred Stock" (hereafter, the "Series I Preferred"). The Junior Preferred Stock, the Senior Preferred Stock and the Series I Preferred shall hereinafter collectively be referred to as the "Preferred Stock."

The conversion ratios for the Preferred Stock set forth in Section 4 below reflect the 1:3 reverse split of the Common Stock that was effected in July 2006.

(b) The following provisions shall be effective as of the date that a registration statement regarding the sale of Common Stock to the public is declared effective by the Securities and Exchange Commission (the "IPO Date"):

(i) The Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board of Directors (authority to do so being hereby expressly vested in the Board of Directors). The Board of Directors is further authorized, subject to limitations prescribed by law, to fix by resolution or resolutions the designations, powers, preferences and rights, and the qualifications, limitations or restrictions thereof, of any wholly unissued series of Preferred Stock, including without limitation authority to fix by resolution or resolutions the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, and liquidation preferences of any such series, and the number of shares constituting any such series and the designation thereof, or any of the foregoing. The Board of Directors is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of any such series then outstanding) the number of shares of any series, the number of which was fixed by it, subsequent to the issuance of shares of such series then outstanding, subject to the powers, preferences and rights, and the qualifications, limitations and restrictions thereof stated in this Amended and Restated Certificate of Incorporation or the resolution of the Board of Directors originally fixing the number of shares of such series. If the number of shares of any series is so decreased, then the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

(ii) Except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock).

ARTICLE V

The respective classes of shares and the holders thereof shall have the rights, preferences, privileges and restrictions set forth below.

1. Dividends. The holders of the Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors, dividends out of funds legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Company) on the Common Stock of the Company, at the rate of \$0.07, \$0.08, \$0.124, \$0.186, \$0.123, \$0.123, \$0.24, \$0.40, \$0.07, \$0.08, \$0.124, \$0.186, \$0.123, \$0.123, \$0.24, \$0.40 and \$0.32 respectively, per share of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, Series E Preferred, Series F Preferred, Series G Preferred, Series H Preferred, Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, Series D-1 Preferred, Series E-1 Preferred, Series F-1 Preferred, Series G-1 Preferred, Series H-1 Preferred and Series I Preferred (each as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) per annum. Each share of Preferred Stock shall rank on a parity with every other share of Preferred Stock, irrespective of series, with regard to distributions at the respective rates fixed for such series, and no distribution shall be declared or paid or set apart for payment on the shares of any series of Preferred Stock unless at the same time a distribution shall be declared or paid or set apart for payment, as the case may be, on the shares of Preferred Stock of each other series then outstanding. All such distributions shall be declared pro rata according to the respective distribution rates of each series. Such dividends shall not be cumulative, and no right to such dividends shall accrue to holders of the Preferred Stock unless declared by the Board of Directors. No dividends or other distributions shall be made with respect to the Common Stock, other than dividends payable solely in Common Stock, unless at the same time an equivalent dividend with respect to each series of the Preferred Stock has been paid or set apart for payment.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the Company ("Liquidation"), either voluntary or involuntary, distributions to the stockholders of the Company shall be made in the following manner:

(i) First, the holders of the Series I Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Company to the holders of the other series of Preferred Stock or Common Stock by reason of their ownership of such stock, the amount of \$4.00 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) for each share of Series I Preferred then held by them plus, in each case, an amount equal to all declared but unpaid dividends on the Series I Preferred. If the assets and funds thus distributed among the holders of the Series I Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Company legally available for distribution shall be distributed among the holders of the Series I Preferred in proportion to the full preferential amount each such holder is otherwise entitled to receive pursuant to this Section 2(a)(i).

(ii) Second, after giving effect to the provisions of Section 2(a)(i) above, the holders of the Series H-1 Preferred, Series G-1 Preferred and Series F-1 Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Company to the holders of the other series of Preferred Stock or Common Stock by reason of their ownership of such stock, the amount of \$2.50 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) for each share of Series H-1 Preferred then held by them, \$1.50 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) for each share of Series G-1 Preferred then held by them and the amount of \$0.768 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) for each share of Series F-1 Preferred then held by them plus, in each case, an amount equal to all declared but unpaid dividends on the Series H-1 Preferred, Series G-1 Preferred and Series F-1 Preferred. If the assets and funds thus distributed among the holders of the Series H-1 Preferred, Series G-1 Preferred and Series F-1 Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Company legally available for distribution shall be distributed among the holders of the Series H-1 Preferred, Series G-1 Preferred and Series F-1 Preferred in proportion to the full preferential amount each such holder is otherwise entitled to receive pursuant to this Section 2(a)(ii).

(iii) Third, after giving effect to the provisions of Sections 2(a)(i) and 2(a)(ii) above, the entire remaining assets and funds of the Company legally available for distribution, if any, shall be distributed among the holders of the Senior Preferred Stock, prior and in preference to any distributions to the holders of the Junior Preferred Stock or Common Stock, in the amount of \$1.00 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) (the "Series A-1 Purchase Price") for each share of Series A-1 Preferred then held by them, \$1.00 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) (the "Series B-1 Purchase Price") for each share of Series B-1 Preferred then held by them, \$1.55 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) (the "Series C-1 Purchase Price") for each share of Series C-1 Preferred then held by them, \$2.33 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) (the "Series D-1 Purchase Price") for each share of Series D-1 Preferred then held by them, \$1.536 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) (the "Series E-1 Purchase Price") for each share of Series E-1 Preferred then held by them, the product of \$1.536 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) (the "Series F-1 Purchase Price") and 0.5 for each share of Series F-1 Preferred then held by them, the product of \$3.00 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) (the "Series G-1 Purchase Price") and 0.5 for each share of Series G-1 Preferred then held by them, and the product of \$5.00 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) (the "Series H-1 Purchase Price") and 0.5 for each share of Series H-1 Preferred then held by them, plus, in each case, an amount equal to all declared but unpaid dividends on each series of Senior Preferred Stock (other than the Series F-1 Preferred, Series G-1 Preferred and Series H-1 Preferred). If the assets and funds thus distributed among the holders of Senior Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts set forth in this Section 2(a)(iii), then the entire assets and funds of the Company legally available for distribution shall be distributed among the holders of Senior Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive pursuant to this Section 2(a)(iii). Notwithstanding the foregoing, the aggregate distributions made pursuant to this Section 2(a)(iii)

with respect to any: (a) share of Series A-1 Preferred shall not exceed one times the Series A-1 Purchase Price, (b) share of Series B-1 Preferred shall not exceed one times the Series B-1 Purchase Price, (c) share of Series C-1 Preferred shall not exceed one times the Series C-1 Purchase Price, (d) share of Series D-1 Preferred shall not exceed one times the Series D-1 Purchase Price, (e) share of Series E-1 Preferred shall not exceed one times the Series E-1 Purchase Price, (f) share of Series F-1 Preferred shall not exceed 0.5 times the Series F-1 Purchase Price, (g) share of Series G-1 Preferred shall not exceed 0.5 times the Series G-1 Purchase Price and (h) share of Series H-1 Preferred shall not exceed 0.5 times the Series H-1 Purchase Price.

(iv) Fourth, after giving effect to the provisions of Sections 2(a)(i)-(a)(iii) above, the holders of the Series H Preferred, Series G Preferred and Series F Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Company to the holders of the other series of Junior Preferred Stock or Common Stock by reason of their ownership of such stock, the amount of \$2.50 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) for each share of Series H Preferred then held by them, \$1.50 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) for each share of Series G Preferred then held by them and the amount of \$0.768 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) for each share of Series F Preferred then held by them plus, in each case, an amount equal to all declared but unpaid dividends on the Series H Preferred, Series G Preferred and Series F Preferred. If the assets and funds thus distributed among the holders of the Series H Preferred, Series G Preferred and Series F Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Company legally available for distribution shall be distributed among the holders of the Series H Preferred, Series G Preferred and Series F Preferred in proportion to the full preferential amount each such holder is otherwise entitled to receive pursuant to this Section 2(a)(i).

(v) Fifth, after giving effect to the provisions of Sections 2(a)(i)-(a)(iv) above, the entire remaining assets and funds of the Company legally available for distribution, if any, shall be distributed among the holders of the Junior Preferred Stock, prior and in preference to any distributions to the holders of Common Stock, in the amount of \$1.00 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) (the "Series A Purchase Price") for each share of Series A Preferred then held by them, \$1.00 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) (the "Series B Purchase Price") for each share of Series B Preferred then held by them, \$1.55 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) (the "Series C Purchase Price") for each share of Series C Preferred then held by them, \$2.33 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) (the "Series D Purchase Price") for each share of Series D Preferred then held by them, \$1.536 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) (the "Series E Purchase Price") for each share of Series E Preferred then held by them, the product of \$1.536 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) (the "Series F Purchase Price") and 0.5 for each share of Series F Preferred then held by them, the product of \$3.00 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) (the "Series G Purchase Price") and 0.5 for each share of Series G Preferred then held by them, and the product of \$5.00 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) (the "Series H Purchase Price") and

0.5 for each share of Series H Preferred then held by them, plus, in each case, an amount equal to all declared but unpaid dividends on each series of Junior Preferred Stock (other than the Series F Preferred, Series G Preferred and Series H Preferred). If the assets and funds thus distributed among the holders of Junior Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts set forth in this Section 2(a)(v), then the entire assets and funds of the Company legally available for distribution shall be distributed among the holders of the Junior Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive pursuant to this Section 2(a)(v). Notwithstanding the foregoing, the aggregate distributions made pursuant to this Section 2(a)(v) with respect to any: (a) share of Series A Preferred shall not exceed one times the Series A Purchase Price, (b) share of Series B Preferred shall not exceed one times the Series B Purchase Price, (c) share of Series C Preferred shall not exceed one times the Series C Purchase Price, (d) share of Series D Preferred shall not exceed one times the Series D Purchase Price, (e) share of Series E Preferred shall not exceed one times the Series E Purchase Price, (f) share of Series F Preferred shall not exceed 0.5 times the Series F Purchase Price, (g) share of Series G Preferred shall not exceed 0.5 times the Series G Purchase Price and (h) share of Series H Preferred shall not exceed 0.5 times the Series H Purchase Price.

(vi) Sixth, after giving effect to the provisions of Sections 2(a)(i)-(v) above, each share of Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, Series D-1 Preferred, Series E-1 Preferred, Series F-1 Preferred, Series G-1 Preferred, Series H-1 Preferred and Series I Preferred shall receive an amount per share equal to the amount that would be paid on each share of Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, Series D-1 Preferred, Series E-1 Preferred, Series F-1 Preferred, Series G-1 Preferred, Series H-1 Preferred and Series I Preferred if such series of Preferred Stock participated ratably with the Junior Preferred Stock, Common Stock and any other shares of capital stock of the Corporation participating therewith on a similar basis in the distribution of all assets of the Corporation, if any, available for distribution to stockholders after the payment of all preferential amounts to be paid on the Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, Series D-1 Preferred, Series E-1 Preferred, Series F-1 Preferred, Series G-1 Preferred, Series H-1 Preferred and Series I Preferred (other than the amounts to be paid pursuant to this clause (vi)), Junior Preferred Stock and any other shares of capital stock of the Corporation entitled to a preference upon liquidation, dissolution or winding up of the Corporation, calculated as if the Preferred Stock and any other shares of capital stock of the Corporation participating therewith on a similar basis had been converted to Common Stock at the then applicable conversion ratios; provided, however, the aggregate distributions made pursuant to this Section 2(a)(vi) with respect to any: (a) share of Series A-1 Preferred shall not exceed one times the Series A-1 Purchase Price, (b) share of Series B-1 Preferred shall not exceed one times the Series B-1 Purchase Price, (c) share of Series C-1 Preferred shall not exceed one times the Series C-1 Purchase Price, (d) share of Series D-1 Preferred shall not exceed one times the Series D-1 Purchase Price, (e) share of Series E-1 Preferred shall not exceed one times the Series E-1 Purchase Price, (f) share of Series F-1 Preferred shall not exceed one times the Series F-1 Purchase Price, (g) share of Series G-1 Preferred shall not exceed one times the Series G-1 Purchase Price, (h) share of Series H-1 Preferred shall not exceed one times the Series H-1 Purchase Price and (i) share of Series I Preferred shall not exceed one times the Series I Purchase Price.

(vii) Seventh, after giving effect to the provisions of Sections 2(a)(i)-(vi) above, the entire remaining assets and funds of the Company legally available for distribution, if

any, shall be distributed ratably among the holders of the Junior Preferred Stock and the holders of Common Stock, subject to the limitations set forth below, in a manner such that the amount distributed to each holder of Common Stock and Junior Preferred Stock shall equal the amount obtained by multiplying the entire assets and funds of the Company legally available for distribution pursuant to this Section 2(a)(vii) by a fraction, the numerator of which shall be the sum of the number of shares of Common Stock then held by the holder and the number of shares of Common Stock issuable upon conversion of the shares of Junior Preferred Stock then held by the holder, and the denominator of which shall be the sum of the total number of shares of Common Stock then outstanding and the total number of shares of Common Stock issuable upon conversion of the total number of shares of Junior Preferred Stock then outstanding; provided, however, the aggregate distributions made pursuant to this Section 2(a)(vii) with respect to any: (a) share of Series A Preferred shall not exceed one times the Series A Purchase Price, (b) share of Series B Preferred shall not exceed one times the Series B Purchase Price, (c) share of Series C Preferred shall not exceed one times the Series C Purchase Price, (d) share of Series D Preferred shall not exceed one times the Series D Purchase Price, (e) share of Series E Preferred shall not exceed one times the Series E Purchase Price, (f) share of Series F Preferred shall not exceed one times the Series F Purchase Price, (g) share of Series G Preferred shall not exceed one times the Series G Purchase Price and (h) share of Series H Preferred shall not exceed one times the Series H Purchase Price. Thereafter, any remaining assets and funds legally available for distribution hereunder shall be distributed ratably solely among the holders of Common Stock.

(b) For purposes of this Section 2, a merger or consolidation of the Company with or into any other corporation or corporations (but excluding any merger effected solely for the purpose of reincorporating in another state), or the merger of any other corporation or corporations into the Company, in which consolidation or merger the stockholders of the Company receive distributions in cash or securities of another corporation or corporations as a result of such consolidation or merger and in which the stockholders of the Company, immediately prior to such merger or consolidation, hold immediately after such merger or consolidation, less than a majority of the outstanding voting securities of the surviving or successor entity or its parent, or a sale of all or substantially all of the assets of the Company (each, a "Corporate Sale"), shall be treated as a Liquidation unless otherwise agreed in writing by the holders of at least a majority of the collective voting power of all of the then outstanding shares of such Preferred Stock. In furtherance of the foregoing, the Corporation shall take such actions as are necessary to give effect to the provisions of this Section 2(b), including without limitation, (i) in the case of a merger or consolidation, causing the definitive agreement relating to such merger or consolidation to provide for a rate at which the shares of Preferred Stock are converted into or exchanged for cash, new securities or other property which gives effect to the preferences and priorities set forth in Section 2(a) above or (ii) in the case of an asset sale, redeeming the Preferred Stock. The Corporation shall promptly provide to the holders of shares of Preferred Stock such information concerning the terms of such merger or consolidation as may reasonably be requested by the holders of Preferred Stock. The amount deemed distributed to the holders of Preferred Stock upon any such transaction shall be the cash or the value of the property, rights or securities distributed to such holders by the Corporation or the acquiring person, firm or other entity, as applicable.

(c) Any securities to be delivered pursuant to Section 2(b) above shall be valued as follows:

(i) securities not subject to investment letter or other similar restrictions on free marketability:

(A) if traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three (3) days prior to the closing;

(B) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever are applicable) over the 30-day period ending three (3) days prior to the closing; and

(C) if there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Company and the holders of the Preferred Stock which would be entitled to receive such securities or the same type of securities and which holders of Preferred Stock represent holders of at least a majority of the collective voting power of all then outstanding shares of such Preferred Stock.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be made in order to effect an appropriate discount from the market value determined as above in subparagraphs 2(c)(i)(A), (B) or (C) to reflect the approximate fair market value thereof, as mutually determined by the Company and the holders of Preferred Stock which would be entitled to receive such securities or the same type of securities and which represent at least a majority of the collective voting power of all then outstanding shares of such Preferred Stock.

3. Right of Redemption. The Company shall not have the right to call or redeem at any time all or any shares of Preferred Stock.

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

(a) Right to Convert.

(i) Subject to Section 4(b) below, each share of Series A Preferred 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 Company or any transfer agent for the Series A Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A Purchase Price by the Series A Conversion Price, determined as provided herein, in effect at the time of conversion (the "Series A Conversion Rate"). The "Series A Conversion Price" shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$3.00. The Series A Conversion Price and the Series A Conversion Rate shall be subject to further adjustments as provided herein.

(ii) Subject to Section 4(b) below, each share of Series B Preferred 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 Company or any transfer agent for the Series B Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series B

Purchase Price by the Series B Conversion Price, determined as provided herein, in effect at the time of the conversion (the "Series B Conversion Rate"). The "Series B Conversion Price" shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$3.00. The Series B Conversion Price and Series B Conversion Rate shall be subject to further adjustments as provided herein.

(iii) Subject to Section 4(b) below, each share of Series C Preferred 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 Company or any transfer agent for the Series C Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series C Purchase Price by the Series C Conversion Price, determined as provided herein, in effect at the time of the conversion (the "Series C Conversion Rate"). The "Series C Conversion Price" shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$4.65. The Series C Conversion Price and Series C Conversion Rate shall be subject to further adjustments as provided herein.

(iv) Subject to Section 4(b) below, each share of Series D Preferred 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 Company or any transfer agent for the Series D Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series D Purchase Price by the Series D Conversion Price, determined as provided herein, in effect at the time of the conversion (the "Series D Conversion Rate"). The "Series D Conversion Price" shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$6.99. The Series D Conversion Price and Series D Conversion Rate shall be subject to further adjustments as provided herein.

(v) Subject to Section 4(b) below, each share of Series E Preferred 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 Company or any transfer agent for the Series E Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series E Purchase Price by the Series E Conversion Price, determined as provided herein, in effect at the time of the conversion (the "Series E Conversion Rate"). The "Series E Conversion Price" shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$4.608. The Series E Conversion Price and Series E Conversion Rate shall be subject to further adjustments as provided herein.

(vi) Subject to Section 4(b) below, each share of Series F Preferred 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 Company or any transfer agent for the Series F Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series F Purchase Price by the Series F Conversion Price, determined as provided herein, in effect at the time of the conversion (the "Series F Conversion Rate"). The "Series F Conversion Price" shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$4.608. The Series F Conversion Price and Series F Conversion Rate shall be subject to further adjustments as provided herein.

(vii) Subject to Section 4(b) below, each share of Series G Preferred 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 Company or any transfer agent for the Series G Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series G Purchase Price by the Series G Conversion Price, determined as provided herein, in effect at the time of the conversion ("Series G Conversion Rate"). The "Series G Conversion Price" shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$9.00. The Series G Conversion Price and Series G Conversion Rate shall be subject to further adjustments as provided herein.

(viii) Subject to Section 4(b) below, each share of Series H Preferred 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 Company or any transfer agent for the Series H Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series H Purchase Price by the Series H Conversion Price, determined as provided herein, in effect at the time of the conversion ("Series H Conversion Rate"). The "Series H Conversion Price" shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$15.00. The Series H Conversion Price and Series H Conversion Rate shall be subject to further adjustments as provided herein.

(ix) Subject to Section 4(b) below, each share of Series A-1 Preferred 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 Company or any transfer agent for the Series A-1 Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A Purchase Price by the Series A-1 Conversion Price, determined as provided herein, in effect at the time of conversion (the "Series A-1 Conversion Rate"). The "Series A-1 Conversion Price" shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$3.00. The Series A-1 Conversion Price and the Series A-1 Conversion Rate shall be subject to further adjustments as provided herein

(x) Subject to Section 4(b) below, each share of Series B-1 Preferred 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 Company or any transfer agent for the Series B-1 Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series B-1 Purchase Price by the Series B-1 Conversion Price, determined as provided herein, in effect at the time of the conversion (the "Series B-1 Conversion Rate"). The "Series B-1 Conversion Price" shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$3.00. The Series B-1 Conversion Price and Series B-1 Conversion Rate shall be subject to further adjustments as provided herein.

(xi) Subject to Section 4(b) below, each share of Series C-1 Preferred 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 Company or any transfer agent for the Series C-1 Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series C-1 Purchase Price by the Series C-1 Conversion Price, determined as provided herein, in effect at the time of the conversion (the "Series C-1 Conversion Rate"). The "Series C-1 Conversion Price"

shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$4.65. The Series C-1 Conversion Price and Series C-1 Conversion Rate shall be subject to further adjustments as provided herein.

(xii) Subject to Section 4(b) below, each share of Series D-1 Preferred 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 Company or any transfer agent for the Series D-1 Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series D-1 Purchase Price by the Series D-1 Conversion Price, determined as provided herein, in effect at the time of the conversion (the "Series D-1 Conversion Rate"). The "Series D-1 Conversion Price" shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$6.99. The Series D-1 Conversion Price and Series D-1 Conversion Rate shall be subject to further adjustments as provided herein.

(xiii) Subject to Section 4(b) below, each share of Series E-1 Preferred 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 Company or any transfer agent for the Series E-1 Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series E-1 Purchase Price by the Series E-1 Conversion Price, determined as provided herein, in effect at the time of the conversion (the "Series E-1 Conversion Rate"). The "Series E-1 Conversion Price" shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$4.608. The Series E-1 Conversion Price and Series E-1 Conversion Rate shall be subject to further adjustments as provided herein.

(xiv) Subject to Section 4(b) below, each share of Series F-1 Preferred 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 Company or any transfer agent for the Series F-1 Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series F-1 Purchase Price by the Series F-1 Conversion Price, determined as provided herein, in effect at the time of the conversion (the "Series F-1 Conversion Rate"). The "Series F-1 Conversion Price" shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$4.608. The Series F-1 Conversion Price and Series F-1 Conversion Rate shall be subject to further adjustments as provided herein.

(xv) Subject to Section 4(b) below, each share of Series G-1 Preferred 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 Company or any transfer agent for the Series G-1 Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series G-1 Purchase Price by the Series G-1 Conversion Price, determined as provided herein, in effect at the time of the conversion ("Series G-1 Conversion Rate"). The "Series G-1 Conversion Price" shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$9.00. The Series G-1 Conversion Price and Series G-1 Conversion Rate shall be subject to further adjustments as provided herein.

(xvi) Subject to Section 4(b) below, each share of Series H-1 Preferred 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 Company or any transfer agent for the Series H-1 Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series H-1 Purchase Price by the Series H-1 Conversion Price, determined as provided herein, in effect at the time of the conversion ("Series H-1 Conversion Rate"). The "Series H-1 Conversion Price" shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$7.50. The Series H-1 Conversion Price and Series H-1 Conversion Rate shall be subject to further adjustments as provided herein.

(xvii) Subject to Section 4(b) below, each share of Series I Preferred 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 Company or any transfer agent for the Series I Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series I Purchase Price by the Series I Conversion Price, determined as provided herein, in effect at the time of conversion (the "Series I Conversion Rate"). The "Series I Conversion Price" shall, as of the date of the filing of this Amended and Restated Certificate of Incorporation, initially be \$4.00. The Series I Conversion Price and the Series I Conversion Rate shall be subject to further adjustments as provided herein.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Rate of the applicable series upon either (i) the date of the closing (the "IPO Closing Date") of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company to the public so long as (x) the number of fully diluted shares outstanding prior to such closing multiplied by the "price to the public" in the final prospectus is not less than \$250,000,000 and (y) aggregate offering proceeds are equal to or greater than \$50,000,000 (prior to deduction of underwriting discounts and commissions) (with at least \$25,000,000 of such gross proceeds being attributable to shares sold by the Company in such offering) or (ii) the written consent of the holders of more than 50% of the then outstanding voting power of the shares of Preferred Stock, voting together as a single class. In the event of the automatic conversion of the Preferred Stock upon a public offering as aforesaid, the person(s) entitled to receive the Common Stock issuable upon such conversion of Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the IPO Closing Date.

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Company shall pay cash equal to such fraction multiplied by the fair market value of the Common Stock on the day of conversion as determined by the Company's Board of Directors. Before any holder of the Preferred Stock shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or of any transfer agent for the Preferred Stock, and shall give written notice to the Company at such office that such holder elects to convert the same; provided, however, that in the event of a conversion pursuant to Section 4(b), the outstanding shares of the Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; and provided further, that the Company

shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of the Preferred Stock are either delivered to the Company or its transfer agent as provided above, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company for losses incurred as a result of the loss of such certificates. The Company shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder of the Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. 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 the Preferred Stock to be converted, or, in the case of automatic conversion, on the date of closing of the offering or the effective date of such written consent, as the case may be, 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.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Section, the following definitions shall apply:

(A) "Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(B) "Original Issue Date" shall mean the date on which the first share of Series I Preferred was first issued.

(C) "Convertible Securities" shall mean any securities of the Company (other than Common Stock) convertible into or exchangeable, directly or indirectly, for Common Stock.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (which shall include issuances or deemed issuances, pursuant to Section 4(d)(iii), of Options or Convertible Securities) by the Company after the Original Issue Date; provided, however, that "Additional Shares of Common Stock" shall not mean shares of Common Stock issued, issuable or, pursuant to Section 4(d)(iii), deemed to be issued:

(1) upon conversion of the Preferred Stock authorized herein or upon conversion of Convertible Securities, provided that such Convertible Securities shall be deemed to be Additional Shares of Common Stock;

(2) to officers, directors or employees of, or consultants to, the Company pursuant to a stock grant, option plan or purchase plan or other stock incentive program, arrangement or agreement approved by the Board of Directors;

(3) as a dividend or distribution on the Preferred Stock;

(4) in connection with placement agent services or legal services (together in the aggregate up to 333,333 shares, as adjusted for stock dividends, splits, combinations, recapitalizations and the like);

(5) in connection with lease or loan transactions, including equipment leases, approved by a majority of the Company's Board of Directors (which lease and loan transactions are not primarily equity financing transactions);

(6) in connection with business combinations, including combinations by merger or asset purchase or other reorganization, or corporate partnering arrangements, approved by a majority of the Company's Board of Directors;

(7) in connection with a firm commitment public offering pursuant to a registration statement filed with the U.S. Securities and Exchange Commission;

(8) (the following securities in this Section 4(d)(i)(D)(8) shall be excluded from the definition of "Additional Shares of Common Stock" only for purposes of calculating anti-dilution adjustments to the Series H Conversion Price and the Series H-1 Conversion Price) shares of Series I Preferred Stock (and the shares of Common Stock issuable upon conversion thereon) and warrants to purchase Common Stock (and the shares of Common Stock issuable upon exercise of such warrants) issued pursuant to the Series I Preferred Stock Purchase Agreement dated October 2006; and

(9) in connection with any transaction for which adjustment is made pursuant to Sections 4(d)(iv), (v) or (vi) hereof.

(ii) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.

(A) Series I.

(1) In the event the Company shall issue Additional Shares of Common Stock prior to the earlier of: (i) October __, 2009 and (ii) the date of the final closing of the sale of capital stock by the Company in a financing occurring after the final sale of shares of Series I Preferred Stock pursuant to the Series I Preferred Stock Purchase Agreement dated October 2006 (the "Event Date"), without consideration or for a consideration per share less than the Series I Conversion Price in effect on the date of and immediately prior to such issue, then and in such event the Series I Conversion Price shall be reduced, concurrently with such issue, to a price equal to the consideration per share received by the Company for such Additional Shares of Common Stock so issued; provided, however, that such adjustment shall apply only to the issuance of Additional Shares of Common Stock in a financing in which the gross proceeds to the Company are greater than or equal to \$10 million and is approved by a majority of the disinterested directors (an "Approved Financing") (for purposes of this Section 4(d)(ii)(A)(1), the term "disinterested directors" shall mean those directors who are not employees of the Company and who do not purchase securities (either directly or through affiliated entities) in the financing).

(2) In the event the Company shall issue Additional Shares of Common Stock after the Event Date or other than in an Approved Financing prior to the Event Date, without consideration or for a consideration per share less than the Series I Conversion Price in effect on the date of and immediately prior to such issue, then and in such event the Series I Conversion Price shall be reduced, concurrently with such issue to a price (calculated to the nearest cent) determined by multiplying the Series I Conversion Price theretofore in effect by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue (not including shares excluded from the definition of Additional Shares of Common Stock by Section 4(d)(i)(D)(2) hereof) plus the number of shares of Common Stock which the aggregate consideration received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such Series I Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue (not including shares excluded from the definition of Additional Shares of Common Stock by Section 4(d)(i)(D)(2) hereof) plus the number of such Additional Shares of Common Stock so issued; provided that, for the purposes of this Section 4(d)(ii), all shares of Common Stock issued or issuable upon conversion of the then outstanding Preferred Stock shall be deemed to be outstanding.

(B) Senior Preferred Stock and Junior Preferred Stock. In the event the Company shall issue Additional Shares of Common Stock without consideration or for a consideration per share less than the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price, the Series D Conversion Price, the Series E Conversion Price, the Series F Conversion Price, the Series G Conversion Price, the Series H Conversion Price, the Series A-1 Conversion Price, the Series B-1 Conversion Price, the Series C-1 Conversion Price, the Series D-1 Conversion Price, the Series E-1 Conversion Price, the Series F-1 Conversion Price, the Series G-1 Conversion Price and the Series H-1 Conversion Price (as the case may be) in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price theretofore in effect by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue (not including shares excluded from the definition of Additional Shares of Common Stock by Section 4(d)(i)(D)(2) hereof) plus the number of shares of Common Stock which the aggregate consideration received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at the applicable Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue (not including shares excluded from the definition of Additional Shares of Common Stock by Section 4(d)(i)(D)(2) hereof) plus the number of such Additional Shares of Common Stock so issued; provided that, for the purposes of this Section 4(d)(ii), all shares of Common Stock issued or issuable upon conversion of the then outstanding Preferred Stock shall be deemed to be outstanding.

For the purposes of this Section 4(d)(ii), the grant, issue or sale of Additional Shares of Common Stock consisting of the same class or series of security issued or issuable at the same price at two or more closings held within a six-month period shall be aggregated and shall be treated as one sale of Additional Shares of Common Stock occurring on the earliest date on which such securities were granted, issued or sold.

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

(A) Cash and Property. Such consideration shall:

(1) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Company without any deduction for commissions and excluding amounts paid or payable for accrued interest or accrued dividends;

(2) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

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

(B) Options and Convertible Securities. In the case of issuance of options to purchase or rights to subscribe for Common Stock or securities by their terms convertible into or exchangeable for Common Stock or options to purchase convertible or exchangeable securities, the following provisions shall apply for all purposes of Section 4(d):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock shall be deemed to be Additional Shares of Common Stock issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subparagraph 4(d)(iii)(A)), if any, received by the Company upon the issuance of such options or rights plus the exercise price provided in such options or rights for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for 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 be Additional Shares of Common Stock 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 Company for any such securities and related options or rights plus the additional consideration, if any, to be received by the Company 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 subparagraph 4(d)(iii)(A)).

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

securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price, the Series D Conversion Price, the Series E Conversion Price, the Series F Conversion Price, the Series G Conversion Price, the Series H Conversion Price, the Series A-1 Conversion Price, the Series B-1 Conversion Price, the Series C-1 Conversion Price, the Series D-1 Conversion Price, the Series E-1 Conversion Price, the Series F-1 Conversion Price, the Series G-1 Conversion Price, the Series H-1 Conversion Price or the Series I Conversion Price 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 Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price, the Series D Conversion Price, the Series E Conversion Price, the Series F Conversion Price, the Series G Conversion Price, the Series H Conversion Price, the Series A-1 Conversion Price, the Series B-1 Conversion Price, the Series C-1 Conversion Price, the Series D-1 Conversion Price, the Series E-1 Conversion Price, the Series F-1 Conversion Price, the Series G-1 Conversion Price, the Series H-1 Conversion Price or the Series I Conversion Price to the extent in any way affected by or computed using such options, rights or 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 conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

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

(iv) Adjustments for Subdivisions or Combinations of or Stock Dividends on Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split or otherwise), into a greater number of shares of Common Stock, or the Company at any time or from time to time after the Original Issue Date shall declare or pay any dividend on the Common Stock payable in Common Stock, the Series A Conversion Rate, the Series B Conversion Rate, the Series C Conversion Rate, the Series D Conversion Rate, the Series E Conversion Rate, the Series F Conversion Rate, the Series G Conversion Rate, the Series H Conversion Rate, the Series A-1 Conversion Rate, the Series B-1 Conversion Rate, the Series C-1 Conversion Rate, the Series D-1 Conversion Rate, the Series E-1 Conversion Rate, the Series F-1 Conversion Rate, the Series G-1 Conversion Rate, the Series H-1 Conversion Rate and the Series I Conversion Rate then in effect shall, concurrently with the effectiveness of such subdivision or stock dividend, be proportionately increased based on the ratio of (A) the number of shares of Common Stock outstanding immediately after such subdivision or stock dividend to (B) the number of shares of Common Stock outstanding immediately prior to such subdivision or stock dividend. 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 after the Original Issue Date, the Series A Conversion Rate, the Series B Conversion Rate, the Series C Conversion Rate, the Series D Conversion Rate, the Series E Conversion Rate, the Series F Conversion Rate, the Series G Conversion Rate, the Series H Conversion Rate, the Series A-1 Conversion Rate, the Series B-1 Conversion Rate, the Series C-1 Conversion Rate, the Series D-1 Conversion Rate, the Series E-1 Conversion Rate, the Series F-1 Conversion Rate, the Series G-1 Conversion Rate, the Series H-1 Conversion Rate and the Series I Conversion Rate then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately decreased on the same basis.

(v) Adjustments for Other Distributions. In the event the Company at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, any distribution payable in (A) securities of the Company or other entities (other than shares of Common Stock and other than as otherwise adjusted in this Section 4 or as otherwise provided in Section 1), (B) evidences of indebtedness issued by the Company or other persons, or (C) assets (excluding cash dividends) or options or rights not referred to in subparagraph 4(d)(iii)(B), then and in each such event provision shall be made so that the holders of the Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of such distribution which they would have received had their Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 4 with respect to the rights of the holders of the Preferred Stock.

(vi) Adjustments for Recapitalization, Reclassification, Exchange and Substitution. If at any time or from time to time the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by recapitalization, capital reorganization, reclassification or otherwise (other than a subdivision, combination of shares or merger or sale of assets transaction provided for above or in Section 2(b)), the Conversion Rate of each series of Preferred Stock then in effect shall, concurrently with the effectiveness of such recapitalization, reorganization or reclassification, be proportionately adjusted such that the Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders thereof 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 subject to receipt by the holders upon conversion of the Preferred Stock immediately before that change. In addition, to the extent applicable in any reorganization or recapitalization, provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of the Company or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such reorganization or recapitalization.

(e) No Impairment. Except as provided in Section 5, the Company 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 or performance of any of the terms to be observed or performed

hereunder by the Company, 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 the Preferred Stock.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price or Conversion Rate of any series of Preferred Stock pursuant to this Section 4, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company 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 (i) such adjustments and readjustments, (ii) the respective Conversion Price and 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 Preferred Stock.

(g) Reservation of Stock Issuable Upon Conversion. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the 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 the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Company will take such corporate action as may, in the opinion of 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.

(h) Notices of Record Date. In the event that the Company shall propose at any time:

(i) to declare any dividend or distribution upon any class of its securities, 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 effect a Corporate Sale or other Liquidation, then the Company shall provide to its stockholders:

(A) in the case of the matters referred to in (i) and (ii) above, at least 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 and the amount and character of such dividend, distribution or right); and

(B) in the case of the matters referred to in (iii) and (iv) above, at least 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 or the record date for the determination of such holders if such record date is earlier).

Each such written notice shall be delivered personally or given by first class mail, postage prepaid, addressed to the holders of the Preferred Stock at the address for each such holder as shown on the books of the Company.

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

(j) Adjustment in Authorized Common Stock. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by an affirmative vote of the holders of a majority of the stock of the Company.

5. Covenants.

(a) Preferred Stock. In addition to any other rights provided by law, so long as at least 1,000,000 shares (subject to adjustment for stock splits, stock dividends or distributions, recapitalizations and similar events) of the Preferred Stock shall be outstanding, the Company shall not, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the then outstanding voting power of the Preferred Stock, voting together as a single class (each share having the greater of (i) one vote or (ii) such number of votes as such share would be able to cast on an as-converted to Common Stock basis):

(i) amend or repeal any provision of, or add any provision to, this Certificate of Incorporation.

(ii) amend or repeal any provision of, or add any provision to the Bylaws if such action would increase or decrease the minimum or maximum number of directors on the Board of Directors.

(iii) authorize or issue any securities (including but not limited to any Options or Convertible Securities as defined in Section 4(d) hereof, but excluding any debt securities that do not contain any equity features) having any preference or priority as to rights or privileges superior to or on a parity with any such preference or priority of any series of the Preferred Stock;

(iv) effect a Corporate Sale or other transaction or series of transactions to which the Company is a party pursuant to which 50% or more of the Company's capital stock is disposed of;

(v) pay or declare any dividend on any shares of Common Stock or Preferred Stock or apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any shares of Common Stock or Preferred Stock; provided that this restriction shall not apply to the repurchase of shares of Common Stock approved by the Company's Board of Directors from employees, officers, directors, consultants or other persons performing services for the Company or any subsidiary pursuant to agreements under which the Company has the option to repurchase such shares;

(vi) fundamentally change the nature of the Company's business; or

(vii) unless approved by at least a 66% vote of the Company's Board of Directors:

(A) mortgage or pledge, or create a security interest in, permit any subsidiary to mortgage, pledge or create a security interest in, all or substantially all of the property of the Company or a subsidiary of the Company;

(B) own, or permit any subsidiary of the Company to own, any stock or other securities of any subsidiary company or other corporation, partnership or entity unless it is wholly owned by the Company;

(C) make any loans or advances to employees of the Company, except in the ordinary course of business as part of travel advances or salary;

(D) make guarantees except in the ordinary course of the Company's business; or

(E) enter into strategic alliances, business combinations or corporate partnerships involving the issuance of more than \$10,000,000 in equity securities.

(b) Series I Preferred Stock. In addition to the foregoing, so long as at least 500,000 shares (subject to adjustment for stock splits, stock dividends or distributions, recapitalizations and similar events) of the Series I Preferred shall be outstanding, the Company shall not, without first obtaining the affirmative vote or written consent of the holders of more than 50% of the then outstanding voting power of the Series I Preferred, voting as a separate class:

(i) reduce the dividend rates on the Series I Preferred provided for herein, or defer the date from which dividends will accrue, or cancel accrued and unpaid dividends, or change the relative seniority rights of the holders of the Series I Preferred as to the payment of dividends in relation to the holders of any other capital stock of the Company;

(ii) apply any assets to the redemption, retirement, purchase or acquisition directly or indirectly, through subsidiaries or otherwise, of any share or shares of Preferred Stock other than by conversion in accordance with Section 4 hereof;

(iii) apply any assets to the redemption, retirement, purchase or acquisition directly or indirectly, through subsidiaries or otherwise, of any share or shares of Common Stock; provided that this restriction shall not apply to the repurchase of shares of Common Stock approved by the Company's Board of Directors from employees, officers, directors, consultants or other persons performing services for the Company or any subsidiary pursuant to agreements under which the Company has the option to repurchase such shares; or

(iv) pay or declare any dividend on any shares of Common Stock or Preferred Stock, except as provided herein.

6. Voting Rights.

(a) Voting for Directors.

(i) So long as at least 2,000,000 shares of Series I Preferred are outstanding (subject to adjustment for stock splits, stock dividends, combinations and other recapitalizations), the Series I Preferred, voting as one class, shall be entitled to elect three members of the Board of Directors.

(ii) The Common Stock, voting as one class, shall be entitled to elect two members of the Board of Directors.

(iii) The Common Stock and the Preferred Stock, voting as one class, shall be entitled to elect all other members of the Board of Directors.

(iv) The foregoing subsections 6(a)(i), 6(a)(ii) and 6(a)(iii) shall have no effect upon and after the occurrence of the IPO Date until the time of the IPO Abandonment Date, if any, upon and after which time subsections 6(a)(i), 6(a)(ii) and 6(a)(iii) shall again be effective. "IPO Abandonment Date" shall mean (a) the date that the Company notifies the managing underwriter in writing that the Company has determined not to proceed with the proposed sale of Common Stock to the public in connection with the registration statement declared effective by the Securities and Exchange Commission on the IPO Date or (b) the date 60 days after the termination of the underwriting agreement with such managing underwriter if the Company has not consummated such proposed sale of Common Stock to the public by such time.

(v) The following provisions shall be effective as of the IPO Date:

(A) The number of directors that constitutes the entire Board of Directors of the Company shall be determined in the manner set forth in the Bylaws of the Company. At each annual meeting of stockholders, directors of the Company shall be elected to hold office until the expiration of the term for which they are elected and until their successors have been duly elected and qualified; except that if any such election shall not be so held, such election shall take place at a stockholders' meeting called and held in accordance with the DGCL.

(b) Any vacancy in the Board of Directors occurring because of death, resignation or removal of a director elected by the holders of the outstanding class or series with voting power entitled to elect him or her shall be filled by the vote or written consent of the holders of the outstanding class or series with voting power entitled to elect him or her. A director may be removed with or without cause by the vote or consent of the holders of the outstanding class or series with voting power entitled to elect him or her in accordance with Delaware General Corporation Law. The foregoing sentences of subsection 6(b) shall have no effect upon and after the occurrence of the IPO Date.

(c) On all other matters, except as otherwise required by law, holders of the Preferred Stock shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled to vote, together with the holders of Common Stock, with respect to any matters upon which holders of Common Stock have the right to vote. Except as otherwise provided herein, the holder of each share of Common Stock issued and outstanding shall have one vote and the holder of each share of Preferred Stock shall be entitled to the number of votes equal to the largest number of shares of Common Stock into which such share of Preferred Stock could be converted at the record date for determination of the stockholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited, such votes to be counted together with all other shares of stock of the Company having general voting power and not separately as a class. For purposes of this Section 6, the "voting power of the shares of Preferred Stock" shall mean the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock could be converted at the dates provided in the preceding sentence. Fractional votes by the holders of Preferred Stock shall not, however, be permitted and any fractional voting rights shall (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) be rounded to the nearest whole number.

(d) Holders of Common Stock and Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Company.

(e) The following provisions shall be effective as of the IPO Date:

(i) Classified Board. The directors of the Company shall be divided into three classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. Directors shall be assigned to each class in accordance with a resolution or resolutions adopted by the Board of Directors. At the first annual meeting of stockholders following the date hereof, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders following the date hereof, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following the date hereof, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting. If the number of directors is changed, any newly created directorships or decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as is practicable,

provided that no decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(ii) Vacancies. Except as otherwise provided for or fixed by or pursuant to the provisions of Article IV, Section 1(b)(i) hereof in relation to the rights of the holders of Preferred Stock to elect directors under specified circumstances, newly created directorships resulting from any increase in the number of directors, created in accordance with the Bylaws of the Company, and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled only by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, and not by the stockholders. A person so elected by the Board of Directors to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified, or until such director's earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(iii) Removal. Any director or the entire Board of Directors may be removed from office at any time, but only for cause, and only by the affirmative vote of the holders of at least a majority of the voting power of the issued and outstanding capital stock of the Company entitled to vote in the election of directors.

(iv) Cumulative Voting. No stockholder will be permitted to cumulate votes at any election of directors.

(v) Action by Written Consent of Stockholders. Any action required or permitted to be taken by the stockholders of the Company must be effected at a duly called annual or special meeting of stockholders of the Company and may not be effected by any consent in writing by such stockholders.

(vi) Special Meetings. Special meetings of stockholders of the Company may be called only by the Chairman of the Board of Directors, the Chief Executive Officer, the President or the Board of Directors acting pursuant to a resolution adopted by a majority of the Board of Directors, and any power of stockholders to call a special meeting of stockholders is specifically denied. Only such business shall be considered at a special meeting of stockholders as shall have been stated in the notice for such meeting.

(vii) Advance Notice. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Company shall be given in the manner and to the extent provided in the Bylaws of the Company.

(viii) Supermajority Vote Requirements. Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation, or any provision of law that might otherwise permit a lesser vote or no vote, the Board of Directors acting pursuant to a resolution adopted by a majority of the Board of Directors and the affirmative vote of sixty-six and

two-thirds percent (66 2/3%) of the then outstanding voting securities of the Company, voting together as a single class, shall be required for the amendment, repeal or modification of the provisions of Article IV, Section 1(b)(i); or this Article V, Section 6(e).

7. Reissuance of Preferred Stock. In the event that any shares of Preferred Stock shall be converted pursuant to Section 4, or otherwise repurchased by the Company, the shares so converted, redeemed or repurchased shall be cancelled and shall not be re-issuable by the Company.

ARTICLE VI

1. The Company is to have perpetual existence.
2. The business and affairs of the Company shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by this Amended and Restated Certificate of Incorporation or the Bylaws of the Company, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Company.

ARTICLE VII

Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the Company shall so provide.

ARTICLE VIII

1. In furtherance and not in limitation of the powers conferred by statute and except as provided in Article V, Section 5, the Company's Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the Company.
2. Effective upon the IPO Date, the following provisions shall be effective:

(a) The affirmative vote of at least a majority of the Board of Directors then in office shall be required in order for the Board of Directors to adopt, amend, alter or repeal the Company's Bylaws. The Company's Bylaws may also be adopted, amended, altered or repealed by the stockholders of the Company. Notwithstanding the above or any other provision of this Amended and Restated Certificate of Incorporation, the Bylaws of the Company may not be amended, altered or repealed except in accordance with Article IX of the Bylaws. No Bylaw hereafter legally adopted, amended, altered or repealed shall invalidate any prior act of the directors or officers of the Company that would have been valid if such Bylaw had not been adopted, amended, altered or repealed.

ARTICLE IX

1. 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 Company shall not be personally liable to the Company or its stockholders for monetary damages for a breach of fiduciary duty as a director.

2. The Company may 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, officer or employee of the Company or any predecessor of the Company or serves or served at any other enterprise as a director, officer or employee at the request of the Company or any predecessor to the Company.

3. Neither any amendment nor repeal of this ARTICLE IX, nor the adoption of any provision of this Company's Certificate of Incorporation inconsistent with this ARTICLE IX, shall eliminate or reduce the effect of this ARTICLE IX, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this ARTICLE IX, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE X

Meetings of the stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Company's Board of Directors or in the Bylaws of the Company.

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