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State of Delaware
Secretary of State
Division of Corporations
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AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF ACCRUENT, INC.

Accruent, Inc., a corporation organized and existing under the laws of the State of Delaware hereby certifies as follows:

A. The name of the corporation is Accruent, Inc. The Original Certificate of Incorporation was filed with the Secretary of the State of Delaware on June 2, 1999 under the name MyContract.com, Inc.

B. Pursuant to Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Amended and Restated Certificate of Incorporation of the corporation.

C. The Amended and Restated Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

ONE The name of the corporation is Accruent, Inc.

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

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

FOUR

1. Capitalization. The corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that the corporation is authorized to issue is 145,000,000 shares of Common Stock (the "Common Stock") with a par value of \$0.001 per share and 93,798,806 shares of Preferred Stock (the "Preferred Stock") with a par value of \$0.001 per share. 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 the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote (voting together on an as-if-converted basis), irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law.

FIVE The rights, preferences, privileges, restrictions and other matters relating to the Preferred Stock are as follows:

1. Designation. 527,215 shares of Preferred Stock are hereby designated Series A Preferred Stock ("Series A Preferred"), 306,516 shares of Preferred Stock are hereby designated Series A-1 Preferred Stock ("Series A-1 Preferred"), 4,997,185 shares of Preferred Stock are hereby designated Series A-2 Preferred Stock ("Series A-2 Preferred"), 6,196,137

Stock ("Series B-1 Preferred"), 32,684,961 shares of Preferred Stock are hereby designated Series C Preferred Stock (the "Series C Preferred"), 26,847,133 shares of Preferred Stock are hereby designated Series D Preferred Stock (the "Series D Preferred"), 10,610,830 shares of Preferred Stock are hereby designated Series E Preferred Stock (the "Series E Preferred") and 9,259,260 shares of Preferred Stock are hereby designated as Series F Preferred Stock (the "Series F Preferred"). The Series B Preferred and Series B-1 Preferred are hereafter collectively referred to as the "Series B Shares." The Series A Preferred, Series A-1 Preferred, Series A-2 Preferred, and the Series B Shares are hereafter collectively referred to as the "Junior Shares."

2. Dividends. Prior and in preference to any declaration or payment of any dividend on the Junior Shares or the Common Stock, the holders of Series F Preferred, Series E Preferred, Series D Preferred and Series C Preferred shall be entitled, as, when and if declared by the corporation's Board of Directors (the "Board") to a dividend out of the corporation's assets legally available therefore at the rate per share of \$0.0297, \$0.0285, \$0.0285 and \$0.016, respectively, per annum (as adjusted for stock splits, dividends, combinations, or like transactions) (such dividends, the "Series F Dividend", "Series E Dividend", "Series D Dividend" and the "Series C Dividend", respectively, and each a "Senior Shares Dividend"), or such greater amount per share paid per share of Common Stock. The Series F Dividend, Series E Dividend, Series D Dividend and Series C Dividend, respectively, shall: (i) not be payable unless each other Senior Shares Dividend is also paid in full; and (ii) be payable in preference and before any payment of any dividend on the Common Stock, the Series A Preferred, Series A-1 Preferred, Series A-2 Preferred, Series B Preferred and Series B-1 Preferred. After payment in full of the Series F Dividend, Series E Dividend, Series D Dividend and the Series C Dividend, the holders of the Series A Preferred, Series A-1 Preferred, Series A-2 Preferred, Series B Preferred and Series B-1 Preferred shall be entitled as, when and if declared by the Board, to dividends out of the corporation's assets legally available therefor at the rate per share of \$0.61, \$0.61, \$0.14, \$0.11, and \$0.05, respectively, per annum (as adjusted for stock splits, dividends, combinations, or like transactions (the "Junior Shares Dividend")), or such greater amount per share paid per share of Common Stock. The Junior Shares Dividend shall: (i) not be payable unless paid to each series of Junior Shares; and (ii) be payable in preference and before any payment of any dividend on the Common Stock of the corporation. Thereafter, the holders of Preferred Stock and Common Stock shall be entitled as, when and if declared by the Board, to dividends out of the corporation's assets legally available therefor; provided, however, that the dividend on any series of any Preferred Stock shall be payable at the same rate per share as would be payable on the shares of Common Stock or other securities into which such series of Preferred Stock is convertible immediately before the record date for such dividend. The right to such dividends on shares of the Common Stock or Preferred Stock shall not be cumulative, and no right shall accrue to holders of Common Stock or Preferred Stock by reason of the fact that dividends on said shares are not declared in any prior period.

3. Liquidation Preference.

(a) Definitions.

"Distributable Assets Account" means a ledger account with a balance equal to the fair market value of all of the assets of the corporation that are legally available for distribution to the stockholders.

"Series A Account," "Series A-1 Account," "Series A-2 Account," "Series B Account," "Series B-1 Account," "Series C Account," "Series D Account," "Series E Account," and "Series F Account" are each ledger accounts to which amounts will be credited pursuant to subdivision (b) and which will be distributed to stockholders pursuant to subdivision (c), and will be collectively referred to as the **"Ledger Accounts."** In pro-rata calculations, the Series A Account will be credited with that amount attributable to number of shares held by the holders of Series A Preferred. Similarly, the Series A-1 Account will be credited with that amount attributable to the number of shares held by the holders of Series A-1 Preferred, and so on for all such Ledger Accounts.

"Series A Preference" means the result obtained by multiplying the total number of shares of Series A Preferred outstanding by the sum of (i) \$7.63 and (ii) any per share dividend declared but unpaid on the Series A Preferred.

"Series A-1 Preference" means the result obtained by multiplying the total number of shares of Series A-1 Preferred outstanding by the sum of (i) \$7.63 and (ii) any per share dividend declared but unpaid on the Series A-1 Preferred.

"Series A-2 Preference" means the result obtained by multiplying the total number of shares of Series A-2 Preferred outstanding by the sum of (i) \$1.77 and (ii) any per share dividend declared but unpaid on the Series A-2 Preferred.

"Series B Preference" means the result obtained by multiplying the total number of shares of Series B Preferred outstanding by the sum of (i) \$1.39 and (ii) any per share dividend declared but unpaid on the Series B Preferred.

"Series B-1 Preference" means the result obtained by multiplying the total number of shares of Series B Preferred outstanding by the sum of (i) \$0.62 and (ii) any per share dividend declared but unpaid on the Series B-1 Preferred.

"Series C Preference" means the result obtained by multiplying the total number of shares of Series C Preferred outstanding by the sum of (i) \$0.32 and (ii) any per share dividend declared but unpaid on the Series C Preferred.

"Series D Preference" means the result obtained by multiplying the total number of shares of Series D Preferred outstanding by the sum of (i) \$0.57 and (ii) any per share dividend declared but unpaid on the Series D Preferred.

“Series E Preference” means the result obtained by multiplying the total number of shares of Series E Preferred outstanding by the sum of (i) \$0.57 and (ii) any per share dividend declared but unpaid on the Series E Preferred.

“Series F Preference” means the result obtained by multiplying the total number of shares of Series F Preferred outstanding by the sum of (i) \$0.594 and (ii) any per share dividend declared but unpaid on the Series F Preferred.

(b) **Preference.** In the event of any liquidation, dissolution or winding up of the corporation, either voluntarily or involuntarily, the holders of the corporation’s Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the corporation to the holders of Common Stock, a liquidation preference. To facilitate the calculation of such liquidation preference, a Ledger Account will be created for each series of Preferred Stock. Such Ledger Accounts will be credited in the following order with the following amounts:

(i) **First.** An amount equal to the Series F Preference will be credited to the Series F Account; provided, however that in the event that the Distributable Assets Account is less than such amount, then the amount to be credited to the Series F Account will be the entire Distributable Asset Account.

(ii) **Second.** Thereafter, each dollar legally available for distribution will be credited to the Series E Account until such time as the Series E Account is equal to the Series E Preference.

(iii) **Third.** Thereafter, each dollar legally available for distribution will be credited to the Series D Account until such time as the Series D Account is equal to the Series D Preference.

(iv) **Fourth.** Thereafter, each dollar legally available for distribution will be credited to the Series C Account until such time as the Series C Account is equal to the Series C Preference.

(v) **Fifth.** Thereafter, until (A) the Series B Account is equal to the Series B Preference and (B) the Series B-1 Account is equal to the Series B-1 Preference, each dollar legally available for distribution will be split between the Series B Account and the Series B-1 Account pro-rata based on the number of shares of Common Stock that the holders of Series B Preferred and Series B-1 Preferred would receive on the conversion of such shares of Preferred Stock, respectively.

(vi) **Sixth.** Thereafter, until (A) the Series A-1 Account is equal to the Series A-1 Preference and (B) the Series A-2 Account is equal to the Series A-2 Preference, each dollar legally available for distribution will be split between the Series A-1 Account and the Series A-2 Account pro-rata based on the number of shares of Common Stock that the holders of Series A-1 Preferred and Series A-2 Preferred would receive on the conversion of such shares of Preferred Stock, respectively.

(vii) Seventh. Thereafter, until the Series A Account is equal to the Series A Preference, each dollar legally available for distribution will be credited to the Series A Account.

(c) Calculation of Balances; Insufficient Assets; Distribution of Account Balances.

(i) The preferences set forth in paragraph (b) will be calculated in order, from subsection (i) to subsection (vii). Each credit applied to one of the Ledger Accounts pursuant to the preferences set forth in paragraph (b) subsections (i) through (vii) will be offset by a deduction from the Distributable Assets Account of an amount equal to such credit. At such time as the balance of the Distributable Assets Account equals zero, no further credits will be applied.

(ii) The amounts credited to the Ledger Accounts pursuant to paragraph (b) will be distributed in the following order: First, the balance of the Series F Account will be distributed to the holders of the Series F Preferred pro rata based on the number of shares of Series F Preferred owned by each holder. Next, the balance of the Series E Account will be distributed to the holders of the Series E Preferred pro rata based on the number of shares of Series E Preferred owned by each holder. Next, the balance of the Series D Account will be distributed to the holders of the Series D Preferred pro rata based on the number of shares of Series D Preferred owned by each holder. Next, the balance of the Series C Account will be distributed to the holders of Series C Preferred pro rata based on the number of shares of Series C Preferred owned by each holder. Next, the balance of the Series B-1 Account will be distributed to the holders of Series B-1 Preferred pro rata based on the number of shares of Series B-1 Preferred owned by each holder. Next, the balance of the Series B Account will be distributed to the holders of Series B Preferred pro rata based on the number of shares of Series B Preferred owned by each holder. Next, the balance of the Series A-2 Account will be distributed to the holders of Series A-2 Preferred pro rata based on the number of shares of Series A-2 Preferred owned by each holder. Next, the balance of the Series A-1 Account will be distributed to the holders of Series A-1 Preferred pro rata based on the number of shares of Series A-1 Preferred owned by each holder. Next, the balance of the Series A Account will be distributed to the holders of Series A Preferred pro rata based on the number of shares of Series A Preferred owned by each holder.

(d) Remaining Assets. After the payment or the setting apart of payment to the holders of the Preferred Stock of the preferential amounts so payable to them under Section 3(a), (b), and (c), the remaining assets of the corporation shall be distributed pro rata to the holders of the Common Stock and the holders of the Preferred Stock at the same rate per share as would be payable on the shares of Common Stock into which such shares of Preferred Stock are convertible immediately prior to such distribution.

(e) Merger or Sale of Assets. Each of the following transactions shall be deemed to be a liquidation, dissolution or winding up of the corporation as those terms are used in this Section 3: (a) any reorganization, consolidation, merger or similar transaction or series of related transactions (each, a "Combination Transaction") in which the corporation is a constituent corporation or is a party if, as a result of such Combination Transaction, the corporation's voting

securities that are outstanding immediately prior to the consummation of such Combination Transaction (other than any such securities that are held by an “Acquiring Stockholder,” as defined below) do not represent, or are not converted into, securities of the surviving corporation of such Combination Transaction (or such surviving corporation’s parent corporation if the surviving corporation is owned by the parent corporation) that, immediately after the consummation of such Combination Transaction, together possess at least 50% of the total voting power of all securities of such surviving corporation (or its parent corporation, if applicable) that are outstanding immediately after the consummation of such combination transaction; (b) a sale of all or substantially all of the assets of the corporation or (c) the sale of a majority of the outstanding voting securities of the corporation (other than a sale of voting securities of the corporation primarily for capital raising purposes), whether in a single transaction or pursuant to a series of related transactions. For purposes of this Section 3(e), **“Acquiring Stockholder”** means a stockholder or stockholders of the corporation that (i) merges or combines with the corporation in such Combination Transaction or (ii) owns or controls a majority of another corporation that merges or combines with the corporation in such Combination Transaction. Notwithstanding the foregoing or the provisions of subsection 5(e) below, if any of the above described transactions are approved by (a) the vote of the holders of at least 50% of the issued and outstanding Preferred Stock voting together as a single class on an as-converted-to-Common-Stock basis, (b) the vote of the holders of at least 75% of the issued and outstanding Series B Shares, voting together as a single class on an as-converted-to-Common-Stock basis, (c) the vote of the holders of at least 56% of the issued and outstanding Series C Shares, (d) the vote of the holders of at least 60% of the issued and outstanding Series D Shares, (e) the vote of the holders of at least a majority of the issued and outstanding Series E Shares, (f) the vote of the holders of at least a majority of the issued and outstanding Series F Shares and (g) a vote sufficient under the Delaware General Corporation Law, this Certificate of Incorporation and the Bylaws of the Corporation, then such transaction and the rights of the holders of Common Stock and Preferred Stock will be governed by the documents to be entered into in connection with such transaction.

(f) Noncash Distributions. If any of the assets of the corporation other than cash are to be distributed under this Section 3 or for any purpose, then the Board shall promptly engage independent competent appraisers to determine the fair market value of the assets to be distributed to the holders of Preferred Stock or Common Stock. The corporation shall, upon receipt of such appraiser’s valuation, give prompt written notice to each holder of shares of Preferred Stock or Common Stock of the appraiser’s valuation. Notwithstanding the above, any securities to be distributed to the stockholders shall be valued as follows:

(i) 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 5-day period ending three business days before the record date for such distribution;

(ii) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the corporation and the holders of not less than a majority of the outstanding shares of Preferred Stock, provided that if the corporation and the holders of a majority of the outstanding shares of Preferred Stock are unable to reach agreement, then by independent appraisal by an investment banker hired and paid by the corporation, but acceptable to the holders of a majority of the outstanding shares of Preferred Stock.

(g) Notice of Transaction. The corporation shall give each holder of record of Preferred Stock written notice of any impending transaction referred to in clause (e) above not later than 10 business days prior to the stockholders' meeting called to approve such transaction, or 10 business 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 3, and the corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than 10 business days after the later of (i) the date the corporation has given the first notice provided for herein or (ii) the date 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. In the event the requirements of this Section 3(g) are not complied with, the Corporation shall forthwith cause the closing of the transaction to be postponed until such notice requirements have been complied with.

4. Voting Rights.

(a) General Voting Rights. Except as otherwise provided herein or required by law or provided in Section 4(b), the holder of each share of Preferred Stock shall be entitled to vote on all matters and shall be entitled to the number of votes equal to the number of shares of Common Stock into which each share of Preferred Stock could be converted pursuant to Section 5 hereof at the record date for the 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. Except as otherwise provided herein or required by law, the Preferred Stock shall have voting rights and powers equal to the voting rights and powers of the Common Stock. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula shall be rounded to the nearest whole number (with one-half rounded upward).

(b) Board of Directors. The holders of Series A Preferred and Series A-1 Preferred, voting together as a separate class, shall be entitled to elect one member of the Board. The holders of Series A-2 Preferred, voting as a separate class, shall be entitled to elect one member of the Board. The holders of Series B Preferred, voting as a separate class, shall be entitled to elect one member of the Board. The holders of Series C Preferred, voting as a separate class, shall be entitled to elect one member of the Board. The holders of the Series D Preferred, voting as a separate class, shall be entitled to elect one member of the Board. The holders of Common Stock and Preferred Stock, voting together as a single class, shall be entitled to elect all remaining members of the Board. 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.

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

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof and without the payment of additional consideration by 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 Preferred Stock. Upon conversion of a share of Preferred Stock, any dividends on such share of Preferred Stock that are declared but unpaid at the time of such conversion will remain payable by the corporation, as required by law. Each share of Preferred Stock shall be convertible into the number of fully paid and nonassessable shares of Common Stock that results from dividing the Conversion Value (as defined below) per share in effect for such series of Preferred Stock at the time of conversion by the Conversion Price (as defined below) per share of such series of Preferred Stock. The number of shares of Common Stock into which each series of Preferred Stock is convertible is hereinafter collectively referred to as the **"Conversion Rate"** for such series. The initial **"Conversion Value"** per share of (i) Series A Preferred, Series A-1 Preferred, Series A-2 Preferred, Series B Preferred, Series B-1 Preferred is \$0.595, the initial Conversion Value for the Series C Preferred is \$0.32, the initial Conversion Value for the Series D Preferred is \$0.57, the initial Conversion Value for the Series E Preferred is \$0.57 and the Conversion Value for the Series F Preferred is \$0.594. The **"Conversion Price"** per share of each series of Preferred Stock (other than the Series D Preferred, the Series E Preferred and the Series F Preferred) shall initially be \$0.32, the Conversion Price per share of the Series D Preferred shall initially be \$0.57, the Conversion Price per share of the Series E Preferred shall initially be \$0.57 and the Conversion Price per share of the Series F Preferred shall initially be \$0.594. The Conversion Price of each series of Preferred Stock shall be subject to adjustment as hereinafter provided. If a conversion election under this Section 5(a) is made in connection with an underwritten offering of the corporation's securities pursuant to the Securities Act of 1933, as amended, (which underwritten offering does not cause an automatic conversion pursuant to Section 5(b) to take place) the conversion may, at the option of the holder tendering shares of the Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of the corporation's securities pursuant to such offering, in which event the holders making such elections who are entitled to receive Common Stock upon conversion of their Preferred Stock shall not be deemed to have converted such shares of the Preferred Stock until immediately prior to the closing of such sale of the corporation's securities in the offering.

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Rate upon the closing of a firm commitment underwritten public offering by a nationally recognized underwriter of the corporation's Common Stock pursuant to an effective registration statement under the Securities Act of 1933, as amended, with a sales price per share of Common Stock of at least \$1.78 (subject to adjustments for stock splits, dividends, etc.) and with gross proceeds to the corporation, at the public offering price, greater than \$30,000,000 (before payment of underwriter discounts, commissions, or expenses) (a **"Qualified IPO"**); **provided, further,** that (i) upon the written consent of the holders of at least a majority of the outstanding shares of Series F Preferred, the Series F Preferred shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Rate; (ii) upon the written consent of the holders of at least a majority of the outstanding shares of Series E Preferred, the Series E Preferred shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Rate; (iii) upon the written consent of the holders of at least sixty percent (60%) of the outstanding shares of Series D Preferred, the Series D Preferred shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Rate; (iv) upon the written consent of the holders of at least a majority of the outstanding shares of Series C Preferred, the Series C Preferred shall automatically be converted into shares of

Common Stock at the then effective applicable Conversion Rate; and (v) upon the written consent of the holders of at least a majority of the outstanding shares of Junior Shares, voting together as one class on an as-converted to Common Stock basis, the Junior Shares shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Rate.

(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 for transfer, at the office of the corporation or of any transfer agent for such Preferred Stock and shall give written notice to the corporation at such office that such holder elects to convert the same. The corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled. Such conversion shall be deemed to have been made immediately before the close of business on the date of such surrender of the shares 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 on such date.

(d) Fractional Shares. 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 corporation shall pay cash equal to such fraction multiplied by the applicable Conversion Price.

(e) Adjustment of Conversion Price. The Conversion Price of each series of Preferred Stock shall be subject to adjustment from time to time as follows:

(i) In the event that the corporation shall issue any Common Stock (other than "Excluded Stock" (as defined below), or stock dividends, subdivisions, split-ups, combinations or dividends, which are covered by Sections 5(e)(iv), (v), and (vi)), for a consideration per share less than the Conversion Price for any series of Preferred Stock in effect immediately before such issuance, then in such an event, the Conversion Price for such series of Preferred Stock in effect immediately after each such issuance shall forthwith be adjusted on the close of business on the date of issuance, if shares of such series of Preferred Stock are outstanding on such date, to a price equal to the quotient obtained by dividing:

(A) an amount equal to the sum of

(w) the total number of shares of Common Stock outstanding (including any shares of Common Stock issuable upon conversion of the Preferred Stock, or deemed to have been issued and outstanding pursuant to subdivision (B)(3) of this Section 5(e)(i) and Section 5(c)(iii)) immediately before such issuance multiplied by the Conversion Price for such series of Preferred Stock in effect immediately before such issuance (or such higher price for which such shares of Common Stock were actually issued), plus

(x) the consideration received by the corporation upon such issuance described in 5(e)(i), by

(B) the total number of shares of Common Stock outstanding (including any shares of Common Stock issuable upon conversion of the Preferred Stock, or deemed to have been issued and outstanding pursuant to subdivision (B)(3) of this Section 5(e)(i) and Section 5(e)(iii), but not including any shares of Common Stock issuable upon conversion of the Preferred Stock as a result of the adjustment to the conversion price then being made pursuant to this Section 5(e)(i)) immediately after the issuance of such Common Stock.

For the purposes of any adjustment of a Conversion Price pursuant to this Section 5(e)(i), the following provisions shall be applicable:

(1) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor without deducting any discounts or commissions paid or incurred by the corporation in connection with the issuance and sale thereof.

(2) In the case of the issuance of 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 by the Board, in accordance with generally accepted accounting treatment; provided, however, that if, at the time of such determination, the corporation's Common Stock is traded in the over-the-counter market or on a national or regional securities exchange, such fair market value as determined by the Board shall not exceed the aggregate "**Current Market Price**" (as defined below) of the shares of Common Stock being issued.

(3) In the case of the issuance (directly or by assumption in a merger or otherwise) of (i) warrants or options to purchase or rights to subscribe for Common Stock (other than Excluded Stock), (ii) securities by their terms convertible into or exchangeable for Common Stock (other than Excluded Stock), or (iii) warrants or options to purchase or rights to subscribe for securities by their terms convertible into or exchangeable for Common Stock (other than Excluded Stock):

(A) the aggregate maximum number of shares of Common Stock deliverable upon exercise of such warrants or options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such warrants, options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subdivisions (1) and (2) above), if any, received by the corporation upon the issuance of such warrants, options or rights plus the minimum purchase price provided in such warrants, options or rights for the Common Stock covered thereby;

(B) the aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities, or upon the exercise of warrants or 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 warrants, 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 warrants, 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 upon the conversion or exchange of such securities or the exercise of any related warrants, options or rights (the consideration in each case to be determined in the manner provided in subdivisions (1) and (2) above);

(C) on any change in the number of shares of Common Stock deliverable upon exercise of any such warrants, options or rights or conversion of or exchange for such convertible or exchangeable securities, or on any change in the minimum purchase price of such warrants, options, rights or securities, other than a change resulting from the antidilution provisions of such warrants, options, rights or securities, the Conversion Price for such series of Preferred Stock shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment made upon (x) the issuance of such warrants, options, rights or securities not exercised, converted or exchanged before such change, as the case may be, been made upon the basis of such change or (y) the warrants, options or rights related to such convertible or exchangeable securities not converted or exchanged before such change, as the case may be, been made upon the basis of such change; and

(D) on the expiration of any such warrants, options or rights, or the termination of any such rights to convert or exchange or the expiration of any warrants, options or rights related to such convertible or exchangeable securities, the Conversion Price for such series of Preferred Stock shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment made upon the issuance of such warrants, options, rights, convertible or exchangeable securities or options or rights related to such convertible or exchangeable securities, as the case may be, been made upon the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such warrants, options or rights, upon the conversion or exchange of such convertible or exchangeable securities or upon the exercise of the options or rights related to such convertible or exchangeable securities, as the case may be.

(ii) **"Excluded Stock"** shall mean:

(A) all shares of Common Stock issued and outstanding on the date of this Amended and Restated Certificate of Incorporation;

(B) all shares of Preferred Stock issued and outstanding on the date hereof, or issued pursuant to the Series F Preferred Stock Purchase Agreement dated on or around August 29, 2006 by and among the corporation and certain investors, as such agreement may be amended pursuant to its terms, and the shares of Common Stock issuable upon conversion of such Preferred Stock;

(C) shares of Common Stock (including options or warrants therefor) issued or issuable to officers, directors, employees, scientific advisors or consultants of, or licensors of technology to, the corporation, pursuant to the corporation's 1999 Stock Plan or 2006 Stock Plan or granted pursuant to an agreement approved by a majority of the non-employee members of the Board;

(D) all shares of Common Stock or Preferred Stock issuable on the exercise of any warrants or options outstanding on the date of this Amended and Restated Certificate of Incorporation ;

(E) all shares of Common Stock (or options or warrants therefor) issued or issuable to the corporation's Chief Executive Officer, which issuance is approved by a majority of the non-employee members of the Board;

(F) all shares of Common Stock or Preferred Stock (or options or warrants therefor) issued or issuable to an equipment lessor, bank, financial institution or similar entity in a transaction, the principal purpose of which is other than equity financing, approved by a majority of the non-employee members of the Board;

(G) all shares of Common Stock or Preferred Stock (or options or warrants therefor) issued or issuable in a merger, acquisition, or similar transaction that is approved by a majority of the non-employee members of the Board; provided however that nothing in this subsection G is intended to modify Article FIVE Section 6;

(H) all shares of Common Stock or Preferred Stock (or options or warrants therefor) issued or issuable pursuant to (i) any transaction approved by a majority of the non-employee members of the Board primarily for the purpose of (x) a joint venture, technology licensing or research and development activity or (y) distribution or manufacture of the corporation's products or services, or (ii) any other transaction involving corporate partners, the principal purpose of which is other than equity financing, approved by a majority of the non-employee members of the Board; provided however that nothing in this subsection H is intended to modify Article FIVE Section 6;

(I) all shares of Series B Preferred, if any, issued to Oracle Corporation pursuant to that certain Ordering Document, dated April 26, 2000 between the corporation and Oracle Corporation;

(J) such shares of the corporation's capital stock if the holders of at least a majority of the then outstanding shares of Junior Shares, a majority of the then outstanding shares of the Series C Preferred, a majority of the then outstanding shares of the Series D Preferred, a majority of the then outstanding shares of Series E Preferred, and a majority of the then outstanding shares of Series F Preferred agree in writing that such shares shall constitute Excluded Stock; or

(K) any shares of Common Stock issued or issuable pursuant to a registered public offering prior to or in connection with which all outstanding shares of Preferred Stock will be converted to Common Stock.

Notwithstanding the foregoing in this Section 5(e)(ii), all shares of capital stock (other than Series B Preferred, if any) issued to Oracle Corporation pursuant to that certain Ordering Document, dated April 26, 2000 between the corporation and Oracle Corporation shall not constitute Excluded Stock.

(iii) All outstanding shares of Excluded Stock (including any shares issuable upon conversion of the Preferred Stock but excluding shares reserved for issuance for option plans for which options have not yet been granted) shall be deemed to be outstanding for all purposes of the computations of Section 5(e)(i) above.

(iv) If the number of shares of Common Stock outstanding at any time after the date hereof is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, on the record date for such payment or such change, the Conversion Price for the Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of any shares of the Preferred Stock shall be increased in proportion to such increase of outstanding shares.

(v) If the number of shares of Common Stock outstanding at any time after the date hereof is decreased by a combination of the outstanding shares of Common Stock, then, on the record date of such combination, the Conversion Price for such series shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of shares of the Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(vi) In case the corporation shall declare a cash dividend upon its Common Stock payable otherwise than out of retained earnings or shall distribute to holders of its Common Stock shares of its capital stock (other than Common Stock), stock or other securities of other persons, evidences of indebtedness issued by the corporation or other persons, assets (excluding cash dividends) or warrants, options or rights (excluding warrants or options to purchase and rights to subscribe for Common Stock or other securities of the corporation convertible into or exchangeable for Common Stock), then, in each such case, immediately following the record date fixed for the determination of the holders of Common Stock entitled to receive such dividend or distribution, the Conversion Price for the Preferred Stock in effect thereafter shall be determined by multiplying the Conversion Price for the Preferred Stock in effect immediately before such record date by a fraction of which the numerator shall be an amount equal to the remainder of (x) the Current Market Price (as defined below) of one share of Common Stock less (y) the amount of such cash dividend in respect of one share of Common Stock or the fair market value (as determined by the Board, whose determination shall be conclusive) of the stock, securities, evidences or indebtedness, assets, warrants, options or rights so distributed in respect of one share of Common Stock, as the case may be, and of which the denominator shall be the Current Market Price of one share of Common Stock. Such adjustment shall be made on the date such dividend or distribution is made, and shall become effective at the opening of business on the business day next following the record date for the determination of stockholders entitled to such dividend or distribution.

(vii) For the purpose of any computation pursuant to this Section 5(e), the “**Current Market Price**” at any date of one share of Common Stock, shall be deemed to be the average of the highest reported bid and the lowest reported offer prices on the preceding business day as furnished by the National Quotation Bureau, Incorporated (or equivalent recognized source of quotations); *provided, however*, that if the Common Stock is not traded in such manner that the quotations referred to in this Section 5(e) are available for the period required hereunder, Current Market Price shall be determined in good faith by the Board.

(viii) In case, at any time after the date hereof, of any capital reorganization, or any reclassification of the capital stock of the corporation (other than a change in par value or as a result of a stock dividend or subdivision, split-up or combination of shares), or the consolidation or merger of the corporation with or into another person (other than a consolidation or merger in which the corporation is the continuing entity and which does not result in any change in the Common Stock), or of the sale or other disposition of all or substantially all the properties and assets of the corporation as an entirety to any other person, the shares of Preferred Stock shall, after such reorganization, reclassification, consolidation, merger, sale or other disposition, be convertible into the kind and number of shares of stock or other securities or property of the corporation or of the entity resulting from such consolidation or surviving such merger or to which such properties and assets shall have been sold or otherwise disposed to which such holder would have been entitled if immediately before such reorganization, reclassification, consolidation, merger, sale or other disposition he had converted his shares of Preferred Stock into Common Stock. The provisions of this Section 5(e)(vii) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or other dispositions.

All calculations under this Section 5 shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(f) Minimal Adjustments. No adjustment in a Conversion Price need be made if such adjustment would result in a change in a Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 that is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment that, on a cumulative basis, amounts to an adjustment of \$0.01 or more in a Conversion Price.

(g) No Impairment. The corporation will not, 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 5 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. This provision shall not restrict the corporation's right to amend its Amended and Restated Certificate of Incorporation with the requisite stockholder consents.

(h) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Rate pursuant to this Section 5, 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 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 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 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 held by such holder.

(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 (other than a cash dividend) or other distribution, the corporation shall mail to each holder of Preferred Stock at least 10 days before the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution.

(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 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 Preferred Stock, the corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including without limitation engaging in its best efforts to obtain the requisite stockholder approval for any necessary amendment to this Certificate of Incorporation.

(k) Notices. Any notice required by the provisions of this Section 5 to be given to the holder 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.

6. Preferred Stock Protective Provisions. So long as at least 10,000,000 shares (as adjusted for stock splits, dividends, combinations, or like transactions) of Preferred Stock shall be outstanding, 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 majority of the outstanding shares of Preferred Stock voting together as a class:

(a) Amendment. Amend or waive any provision of this Certificate of Incorporation or the corporation's bylaws;

(b) Licenses. Grant an exclusive license on any of the corporation's material technology;

(c) Line of Business. Change the corporation's principal line of business;

(d) Merger or Consolidation. Approve, constitute or effect a merger, consolidation, or any other reorganization of the corporation (including a Combination Transaction as defined in Article FIVE Section 3);

(e) Sale of Assets. Sell, convey, lease, assign, transfer or otherwise dispose of, all or substantially all of the assets, property or business of the corporation;

(f) Dissolution. Dissolve, liquidate or wind up the corporation;

(g) Repurchases and Dividends. Repurchase, pay or declare any dividend on, or make any distribution on, any shares of stock other than: (i) as permitted under Section 12 of this Article FIVE (ii) the repurchase of shares of Common Stock or Preferred Stock issued to or held by employees, directors or consultants of or to the corporation upon termination of their employment or services pursuant to agreements providing for the right of such repurchase between the corporation and such persons; (iii) the repurchase of shares of Common Stock in connection with the exercise of the right of first refusal pursuant to agreements providing for the right of first refusal between the corporation and any of its stockholders if such repurchase is approved by the majority of the non-employee directors of the corporation;

(h) Convertible Notes and Warrants. Authorize any convertible note or warrant convertible into or exercisable for any capital stock, having rights or preferences senior to or on parity with any series of Preferred Stock as to dividend rights, liquidation, or voting preferences;

(i) Debt Securities. Create, or authorize the creation of, or issue, or authorize the issuance of, or permit any subsidiary to take any such action, any debt security (other than debt with no equity feature) including, without limitation, any debt security which by its terms is convertible into or exchangeable for any equity security of the corporation and any security of the corporation which is a combination of debt and equity unless such debt security has received the prior approval of the majority of the non-employee directors of the corporation;

(j) Options and Purchase Rights. Increase the number of shares reserved for issuance under any of the corporation's stock option plans or stock purchase plans; or

(k) Board of Directors. Increase or decrease the number of members constituting the entire Board, which shall initially be 7.

7. Series B Shares Protective Provision. So long as at least 1,000,000 shares (as adjusted for stock splits, dividends, combinations, or like transactions) of the Series B Shares shall be outstanding, the corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least 75% of the outstanding Series B Shares voting as a class:

(a) Authorized Number. Increase or decrease the aggregate authorized number of Series B Shares;

(b) No Change. Alter or change the rights, preferences, privileges or restrictions of the Series B Shares, including, but not limited to, amending the 75% vote requirement afforded the holders of Series B Shares in Article FIVE Section 3(e) hereof; or

(c) Disproportionate Treatment. Alter or change the powers, preferences, or special rights of the Preferred Stock or any series of Preferred Stock by amending this Amended and Restated Certificate of Incorporation so as to affect the Series B Preferred or Series B-1 Preferred, as the case may be, adversely and disproportionately *vis a vis* any other series of Preferred Stock.

8. Series C Preferred Protective Provisions. So long as at least 3,000,000 shares (as adjusted for stock splits, dividends, combinations, or like transactions) of Series C Preferred are

outstanding, the corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least 56% of the outstanding shares of Series C Preferred:

(a) Authorized Number. Increase or decrease the authorized number of shares of Series C Preferred;

(b) No Change. Alter or change the rights, preferences, privileges or restrictions of the Series C Preferred, including, but not limited to, amending the 56% vote requirement afforded the Series C Preferred in Article FIVE Section 3(e) hereof;

(c) Disproportionate Treatment. Alter or change the powers, preferences, or special rights of the Preferred Stock or any series of Preferred Stock by amending this Amended and Restated Certificate of Incorporation so as to affect the Series C Preferred adversely and disproportionately *vis a vis* any other series of Preferred Stock; or

(d) Create any New Class or Series. Create (by reclassification or otherwise) any new class or series of shares having any rights, preferences, or privileges superior to or on a parity with the Series C Preferred.

9. Series D Preferred Protective Provisions. So long as at least 3,000,000 shares (as adjusted for stock splits, dividends, combinations, or like transactions) of Series D Preferred are outstanding, the corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least 60% of the outstanding shares of Series D Preferred:

(a) Authorized Number. Increase or decrease the authorized number of shares of Series D Preferred;

(b) No Change. Alter or change the rights, preferences, privileges or restrictions of the Series D Preferred, including, but not limited to, amending the 60% vote requirement afforded the Series D Preferred in Article FIVE Section 3(e) hereof;

(c) Disproportionate Treatment. Alter or change the powers, preferences, or special rights of the Preferred Stock or any series of Preferred Stock by amending this Amended and Restated Certificate of Incorporation so as to affect the Series D Preferred adversely and disproportionately *vis a vis* any other series of Preferred Stock; or

(d) Create any New Class or Series. Create (by reclassification or otherwise) any new class or series of shares having any rights, preferences, or privileges superior to or on a parity with the Series D Preferred.

10. Series E Preferred Protective Provisions. So long as at least 1,000,000 shares (as adjusted for stock splits, dividends, combinations, or like transactions) of Series E Preferred are outstanding, 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 majority of the outstanding shares of Series E Preferred:

(a) Authorized Number. Increase or decrease the authorized number of shares of Series E Preferred;

(b) No Change. Alter or change the rights, preferences, privileges or restrictions of the Series E Preferred, including, but not limited to, amending the majority vote requirement afforded the Series E Preferred in Article FIVE Section 3(e) hereof;

(c) Disproportionate Treatment. Alter or change the powers, preferences, or special rights of the Preferred Stock or any series of Preferred Stock by amending this Amended and Restated Certificate of Incorporation so as to affect the Series E Preferred adversely and disproportionately *vis a vis* any other series of Preferred Stock; or

(d) Create any New Class or Series. Create (by reclassification or otherwise) any new class or series of shares having any rights, preferences, or privileges superior to or on a parity with the Series E Preferred.

11. Series F Preferred Protective Provisions. So long as at least 1,000,000 shares (as adjusted for stock splits, dividends, combinations, or like transactions) of Series F Preferred are outstanding, 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 majority of the outstanding shares of Series F Preferred:

(a) Authorized Number. Increase or decrease the authorized number of shares of Series F Preferred;

(b) No Change. Alter or change the rights, preferences, privileges or restrictions of the Series F Preferred, including, but not limited to, amending the majority vote requirement afforded the Series F Preferred in Article FIVE Section 3(e) hereof; or

(c) Disproportionate Treatment. Alter or change the powers, preferences, or special rights of the Preferred Stock or any series of Preferred Stock by amending this Amended and Restated Certificate of Incorporation so as to affect the Series F Preferred adversely and disproportionately *vis a vis* any other series of Preferred Stock.

(d) Create any New Class or Series. Create (by reclassification or otherwise) any new class or series of shares having any rights, preferences, or privileges superior to or on a parity with the Series F Preferred.

12. Residual Rights. All rights accruing to the outstanding shares of capital stock not expressly provided for to the contrary herein shall be vested in the Common Stock.

13. No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares that the corporation is authorized to issue.

14. Loans and Redemptions of Shares Pledged as Security for Loans. Notwithstanding anything in Section 315 and Sections 500, et seq., of the California General Corporations Law,

or any similar provisions of the Delaware General Corporations Law, the corporation may at any time and from time to time make loans to officers, directors and stockholders of the corporation which are secured by shares of capital stock of the corporation, and may pursuant to the terms of such loans foreclose on such loans by redeeming such pledged shares of capital stock at the then existing fair market value of such pledged shares, provided that the Board of Directors has unanimously approved the making of the loans and the foreclosure action.

SIX The following is applicable to the 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, as, when and if declared by the Board, out of any assets of the corporation legally available therefor, such dividends as may be declared from time to time by the Board.

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 3 of Article FIVE hereof.

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. Each share of Common Stock shall have the right to one vote, and the holder thereof shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the corporation and as provided by law, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

SEVEN The corporation is to have perpetual existence.

EIGHT In furtherance and not in limitation of the powers conferred by statute, the Board is expressly authorized to make, alter, amend or repeal the Bylaws of the corporation consistent with the provisions and consent requirements contained herein.

NINE The election of directors need not be by written ballot unless the Bylaws of the corporation shall so provide.

TEN 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. 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 or she, his or her 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. Neither any amendment nor repeal of this Article, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise, before such amendment, repeal or adoption of an inconsistent provision.

ELEVEN The corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, provided that no provision of this Amended and Restated Certificate of Incorporation which establishes a percentage of shares of any class or series required to take any action shall be amended, altered, changed, repealed, or rescinded in any respect that would have the effect of changing such percentage, unless such amendment is approved by a written consent or vote of holders of such series or class constituting not less than the number required by the voting requirement sought to be reduced, and all rights conferred upon stockholders herein are granted subject to this reservation.

D. The foregoing amendment and restatement of the Certificate of Incorporation has been duly approved by the Board in accordance with the provisions of Sections 242 and 245 of the General Corporations Law.

* * * * *

IN WITNESS WHEREOF, the corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this 8th day of September, 2006.

/s/ Mark Friedman

Mark Friedman, Chief Executive Officer