

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 05:36 PM 03/18/2009  
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**EXECUTION COPY**

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION OF  
AEROSCOUT INC.**

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

1. The date of filing of the Corporation's original Certificate of Incorporation with the Secretary of State of the State of Delaware was October 18, 1999 under the name Bluesoft, Inc.
2. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation restates, integrates and further amends the provisions of the Certificate of Incorporation.
3. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware and the stockholders of the Corporation have given their written consent hereto in accordance with Section 228 of the General Corporation Law of the State of Delaware.
4. The Certificate of Incorporation of this Corporation is hereby amended and restated in its entirety to read as follows:

**ARTICLE I**

The name of the corporation is AeroScout Inc. (hereinafter, the "**Company**" or the "**Corporation**").

**ARTICLE II**

The address of the registered office of the Corporation in the State of Delaware, County of New Castle is 1313 N. Market Street, Suite 5100, Wilmington, Delaware 19801. The name of its registered agent at that address is PHS Corporate Services, Inc.

**ARTICLE III**

The nature of the business or purposes 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 the State of Delaware as set forth in Title 8 of the Delaware Code (the "**DGCL**").

**ARTICLE IV**

**Authorized Stock**

This Corporation is authorized to issue two classes of stock, designated "Preferred Stock" and "Common Stock." The total number of shares that this Corporation shall have authority to issue is 142,338,812, of which 79,908,243 shares shall be Common Stock, \$0.001 par value per share, and 62,430,569 shares shall be Preferred Stock, \$0.001 par value per share. 521,758 of the authorized shares of Preferred Stock are hereby designated Series A-1 Preferred Stock (the "**Series A-1 Preferred**"), 27,860,782 of the authorized shares of Preferred Stock are hereby designated Series B-1 Preferred Stock (the "**Series B-1 Preferred**"), 21,512,500 of the authorized shares of Preferred Stock are hereby designated Series C Preferred Stock (the "**Series C Preferred**") and 12,535,529 of the authorized shares of Preferred Stock are hereby designated Series D Preferred Stock (the "**Series D Preferred**" and, together with the Series A-1 Preferred, Series B-1 Preferred and Series C Preferred, the "**Series Preferred**").

## **Preferred Stock**

A statement of the rights, preferences, privileges and restrictions granted to or imposed on the Series Preferred and the holders thereof is as follows:

### **Section 1. Dividends.**

(a) The holders of Series D Preferred, Series C Preferred and Series B-1 Preferred (collectively, the "**Senior Preferred**"), in preference to the holders of Series A-1 Preferred and Common Stock, shall be entitled to receive, when and as declared by the board of directors of the Corporation (the "**Board**"), out of any assets of the Corporation legally available therefor, cash dividends at the rate of 8% of the applicable Original Issue Price (as defined below) per annum on each outstanding share of Senior Preferred. Such dividends shall be payable only when, as and if declared by the Board and shall be non-cumulative.

(b) No dividend or distribution shall be declared or paid on any shares of Common Stock unless at the same time an equivalent dividend or distribution has been declared or paid on all outstanding shares of Series Preferred. In addition, in no event shall the Corporation declare any dividends on the Series A-1 Preferred or Common Stock until the full preferences of the Senior Preferred under Sections 2(a) 2(b) and 2(c) below shall have been paid to the Senior Preferred.

(c) The "**Original Issue Price**" of the Series A-1 Preferred shall be \$24.160818 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof). The "**Original Issue Price**" of the Series B-1 Preferred shall be \$0.441216 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof). The "**Original Issue Price**" of the Series C Preferred shall be \$1.00 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof). The "**Original Issue Price**" of the Series D Preferred shall be \$1.4214 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof).

(d) So long as any shares of Senior Preferred are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Series A-1 Preferred or the Common Stock, or purchase, redeem or otherwise acquire for value any shares of the Series A-1 Preferred or the Common Stock until all dividends as set forth in Section 1(a) above on the Senior Preferred shall have been paid or declared and set apart, except for acquisitions of Common Stock in exercise of the Company's right of first refusal to repurchase such shares.

(e) The provisions of Sections 1(c) and 1(d) shall not apply to a dividend payable solely in Common Stock to which the provisions of Section 4(d)(ii) hereof are applicable, or any repurchase of any outstanding securities of the Company that is approved by (i) the Board and (ii) the Senior Preferred, as may be required by this Certificate of Incorporation.

### **Section 2. Liquidation.**

In the event of any Liquidation (as defined below) then all of the assets and funds of the Corporation legally available for distribution, the proceeds received by the stockholders, in their

capacities as such, and all dividends available for distribution (collectively, the "**Distributable Assets**"), shall be distributed pursuant to the following order of preference

(a) First, the holders of Series D Preferred shall be entitled to be paid out of the Distributable Assets, for each share of Series D Preferred held by them, an amount per share of Series D Preferred equal to the applicable Original Issue Price plus all declared and unpaid dividends on such Series D Preferred (the "**Series D Liquidation Preference**"). If, upon any such Liquidation, the assets of the Corporation shall be insufficient to make payment in full to all holders of Series D Preferred, then such assets shall be distributed among the holders of Series D Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) Thereafter, the holders of Series C Preferred shall be entitled, before any distribution or payment to holders of any other class of stock of the Corporation, to be paid out of the Distributable Assets, for each share of Series C Preferred held by them, an amount per share of Series C Preferred equal to the applicable Original Issue Price plus all declared and unpaid dividends on such Series C Preferred (the "**Series C Liquidation Preference**"). If, upon any such Liquidation, the assets of the Corporation shall be insufficient to make payment in full to all holders of Series C Preferred, then such assets (or consideration) shall be distributed among the holders of Series C Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(c) Thereafter, the holders of Series B-1 Preferred shall be entitled, before any distribution or payment to holders of any other class of stock of the Corporation, to be paid out of the Distributable Assets, for each share of Series B-1 Preferred held by them, an amount per share of Series B-1 Preferred equal to the applicable Original Issue Price plus all declared and unpaid dividends on such Series B-1 Preferred (the "**Series B-1 Liquidation Preference**"). If, upon any such Liquidation, the assets of the Corporation shall be insufficient to make payment in full to all holders of Series B-1 Preferred, then such assets (or consideration) shall be distributed among the holders of Series B-1 Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

The liquidation preferences set forth in Sections 2(a), 2(b) and 2(c) herein shall be referred to collectively as the "**Aggregate Senior Liquidation Preference**".

(d) Thereafter, up to 17% of the Distributable Assets remaining after the distribution of the Aggregate Senior Liquidation Preference shall be distributed as follows: (i) up to 15% in accordance with the terms and conditions of the Company's Amended and Restated Employees Carve-Out Plan, as amended from time to time, and (ii) up to 2% to the Company's current chairman pursuant to his put option (such distribution, the "**ESOP Carve-Out Preference**").

(e) Thereafter, any remaining Distributable Assets shall be distributed among all holders of Series D Preferred, Series C Preferred and Series B-1 Preferred on a pari-passu and as converted basis, up to an amount per share of such Preferred Stock held by them not to exceed two and a half (2.5) times the applicable Original Issue Price per such share (in addition to the Distributable Assets distributed to such holders pursuant to Sections 2(a), (b) and (c) above), minus the ESOP Carve-Out Preference. If the Distributable Assets remaining for distribution under this Section 2(e) shall be insufficient to make payment in full to all holders entitled under this Section

2(e), then such remaining Distributable Assets shall be distributed among all such holders, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(f) Thereafter, up to 15.75% the Distributable Assets shall be distributed among all of holders of Series A-1 Preferred, in proportion to their respective holdings in the Corporation on a pro-rata and as-converted basis, provided that such distribution shall not exceed the applicable Original Issue Price. If, upon any such Liquidation, the assets of the Corporation shall be insufficient to make payment in full to all holders of Series A-1 Preferred, then such assets shall be distributed among the holders of Series A-1 Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(g) Thereafter, the remaining Distributable Assets shall be distributed among all of the stockholders of the Corporation, including the holders of Series Preferred, in proportion to their respective holdings in the Corporation on a pro-rata and as-converted basis, and excluding any holders of Common Stock or options to purchase Common Stock that participated in the ESOP Carve-Out.

(h) Unless otherwise determined by the holders of 60% of the outstanding Senior Preferred, voting together as a separate class on an as-converted basis, a “**Liquidation**” shall include any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary and any Acquisition or Asset Transfer. For the purposes of this Section 2: (i) “**Acquisition**” shall mean any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, own less than 50% of the voting power of the surviving entity (or in the event stock or ownership interests of an affiliated entity are issued in such transaction, less than 50% of the voting power of such affiliated entity) immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions to which the Company is a party in which in excess of 50% of the Company’s outstanding voting power is transferred; provided that an Acquisition shall not include (x) any consolidation or merger effected exclusively to change the domicile of the Company, or (y) any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof; and (ii) “**Asset Transfer**” shall mean a sale, lease or other disposition of all or substantially all of the assets of the Company.

(i) For purposes of this Section 2, if the consideration to be received is securities of a corporation or other property other than cash, its value will be deemed its fair market value thereof at the time of the Liquidation, as determined in good faith by the Board.

(j) The Corporation shall not approve, and the Corporation’s stockholders shall be prohibited from effecting, any Liquidation, unless adequate provisions are made to satisfy the distribution for the ESOP Carve-Out Preference in accordance with the provisions hereunder.

### **Section 3. Voting.**

(a) Each holder of shares of Series Preferred shall have the right to one vote for each share of Common Stock into which such share of Series Preferred could be converted immediately after the close of business on the record date fixed for such meeting or the effective

date of such written consent, and shall be entitled to notice of any stockholders meeting in accordance with the By-laws of this Corporation. Except as otherwise provided herein or as required by law, the Series Preferred shall be entitled to vote at any annual or special meeting of the stockholders and may act by written consent, together with the holders of Common Stock, with respect to election of directors and any question or matter upon which holders of Common Stock have the right to vote.

(b) If any proposed amendment to this Certificate of Incorporation would alter or change the powers, preferences or special rights of one (1) or more series of the Company's preferred stock so as to affect them adversely, but shall not so affect the entire class of preferred stock, then such amendment shall require the prior written consent of the holders of at least a majority of the outstanding shares of such series of preferred stock that is so adversely affected; *provided, however*, that any such amendment in respect of the liquidation preference of the Series A-1 Preferred as set forth in Article IV Section 2(f) shall require the consent of the holders of 75% of the (i) outstanding shares of Series A-1 Preferred and (ii) shares of Common Stock issued to such holders of Series A-1 Preferred pursuant to the Series B-1 Preferred Stock Purchase Agreement, dated as of December 15, 2003, among the Corporation and the Purchasers identified therein.

(c) Without derogating from Section 3(d) below, for purposes of determining whether a separate vote of holders of each class of the Corporation's stock are required, the creation and/or issuance of new classes or series of stock with rights, preferences or obligations in parity with, senior or junior to, or otherwise different from the Senior Preferred shall not be deemed an amendment or action that adversely affects the rights, preference or obligations of the Senior Preferred and shall not require a separate class vote of the holders of the different series of Preferred Stock, unless otherwise required by law.

(d) The consent of the holders of 60% of the outstanding shares of Senior Preferred, voting together as a separate class, shall be required in connection with the taking of the following actions by the Corporation (whether by merger, recapitalization or otherwise):

(1) any authorization or designation, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Corporation having rights, preferences and privileges equal or senior to the Senior Preferred; (2) any amendment, alteration or repeal of any provision of the Corporation's Certificate of Incorporation or Bylaws (including any filing of a Certificate of Designation); (3) any agreement by the Company or its stockholders regarding an Asset Transfer or Acquisition or any other merger (whether or not the Corporation is the surviving corporation) or consolidation of the Company or corporate reorganization; (4) any redemption, repurchase, declaration or payment of any dividend or other distribution of cash, shares or other assets with respect to Common Stock or Preferred Stock (other than pursuant to agreements approved by the Board, including a majority of the directors elected by the holders of Senior Preferred); (5) any voluntary liquidation or dissolution of the Corporation or entering into any bankruptcy or similar proceeding; (6) any appointment or replacement the Corporation's auditors; (7) any transaction or series of transactions involving the sale of material intellectual property of the Corporation; (8) any increase or decrease in the authorized number of shares of Common Stock or Preferred Stock; or (9) any increase or decrease in the authorized number of members of the Company's Board.

(e) The consent of a majority of the directors elected by the holders of Series B-1 Preferred and Series C Preferred shall be required for any matter involving:

(1) entering into partnership or joint venture agreements; (2) the repurchase or redemption of any shares of the Corporation; (3) changing the nature of the business of the Corporation; (4) the making of investments, acquisition of assets or businesses valued in excess of \$50,000, other than as approved in the business plan; (5) entering into transactions with stockholders, affiliates of stockholders, immediate family members of stockholders, officers, senior managers or directors of the Corporation or a member of his or her immediate family or an entity owned or controlled by such officer, director, senior manager or family member; (6) the selection of the Corporation's counsel; (7) the hiring or firing of any of the Corporation's Chief Executive Officer, Chief Operating Officer, Chief Financial Officer and/or Chief Technology Officer; (8) incurring any indebtedness or accepting a purchase order in excess of \$100,000; (9) the determination or change of signature rights; (10) commencing or settling lawsuits or threatened lawsuits in excess of \$100,000; (11) effectuating an initial public offering at a company pre-money valuation below \$20,000,000; (12) the formation of a subsidiary or an investment in any entity, which is not wholly owned by the Corporation; (13) granting an exclusive license of the material intellectual property of the Corporation; and (14) the approval of the Company's annual budget and business plan.

**(f) Election of Board of Directors.**

(1) The holders of Series B-1 Preferred, voting as a separate class, shall be entitled to elect two (2) members of the Board, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors

(2) The holders of Series C Preferred, voting as a separate class, shall be entitled to elect one (1) member of the Board, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(3) The holders of Common Stock, voting as a separate class, shall be entitled to elect one member of the Board, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(4) The holders of Common Stock and Series Preferred, voting together as a single class on an as-if-converted basis, shall be entitled to elect all remaining members of the Board, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

**Section 4. Conversion.** The holders of the Series Preferred shall have the following conversion rights and obligations (the "**Conversion Rights**"):

(a) Right to Convert Series Preferred. Subject to Section 4(b) hereof, each share of Series Preferred shall be convertible at any time after the date of issuance of such share, at the option of the holder thereof, at the office of the Corporation or any transfer agent for the Series Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price by the applicable Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The initial Conversion

Price with respect to each share of Series A-1 Preferred shall be \$28.992981. The initial Conversion Price with respect to each share of Series B-1 Preferred shall be the Original Issue Price of the Series B-1 Preferred. The initial Conversion Price with respect to each share of Series C Preferred shall be the Original Issue Price of the Series C Preferred. The initial Conversion Price with respect to each share of Series D Preferred shall be the Original Issue Price of the Series D Preferred. The Conversion Prices with respect to Series Preferred shall be subject to adjustment as hereinafter provided, as applicable.

(b) Automatic Conversion. Each share of Series Preferred shall automatically be converted into shares of Common Stock at the then applicable Conversion Price upon the earlier of (i) the closing 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 to the public which results in total cash proceeds to the Corporation (before underwriters' commissions and expenses) of at least \$30,000,000 (a "**Qualified Public Offering**") or (ii) the affirmative vote of the holders of 60% of the outstanding shares of Senior Preferred, voting together as a separate single class on an as-converted basis. In addition, each share of Series A-1 Preferred shall automatically be converted into shares of Common Stock at the then applicable Conversion Price upon the affirmative vote of the holders of 75% of the (i) outstanding shares of Series A-1 Preferred and (ii) shares of Common Stock issued to such holders of Series A-1 Preferred pursuant to the Series B-1 Preferred Stock Purchase Agreement dated as of December 15, 2003 among the Corporation and the Purchasers identified therein. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(c) below. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(c) below.

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of the Series Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay to such holder cash equal to such fraction multiplied by the fair market value of one share of Common Stock (as determined by the Board) on the date of conversion.

(i) Subject to clause (ii) below, before any holder of Series Preferred shall be entitled to convert the same into full shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Series Preferred, and shall give written notice to the Corporation at such office that the holder elects to convert the same. Such notice shall also state whether the holder elects to receive in cash any declared but unpaid dividends on the Series Preferred proposed to be converted, or to convert such dividends into shares of Common Stock at their fair market value as determined by the Board. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series Preferred (1) a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid, (2) a check payable to such holder in the amount of any cash amounts payable as a result of the conversion of any shares of Series Preferred into fractional shares of Common Stock, and, if such holder elects not to convert unpaid dividends into Common Stock, all declared and unpaid dividends on such holder's converted Series Preferred and, (3) if less than all of the shares of the Preferred Stock represented by such certificate are converted into Common Stock, a certificate representing the shares of Series

Preferred not converted into Common Stock. In the event of any conversion at the election of a holder of Series Preferred, 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 Series Preferred to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(ii) If the conversion is pursuant to Section 4(b)(i) above, the conversion shall be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Series Preferred shall not be deemed to have converted such Series Preferred until immediately prior to the closing of such sale of securities. Notice of such conversion shall be given by the Corporation by mail, postage pre-paid, to the holders of the Series Preferred at their addresses shown in the Corporation's records, within a reasonable time after the closing date of the Qualified Public Offering. Promptly after the closing date of the Qualified Public Offering specified in such notice, each holder of Series Preferred shall surrender the certificate or certificates representing such holder's shares of Series Preferred for the number of shares of Common Stock to which such holder is entitled, at the office of the Corporation or any transfer agent for the applicable series of Series Preferred. Upon surrendering such shares each holder of Series Preferred shall deliver a notice to the Corporation that shall state whether the holder elects to receive in cash any declared but unpaid dividends on the Preferred Stock to be converted, or to convert such dividends into shares of Common Stock at their fair market value as determined by the Board. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock (1) a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid, and (2) a check payable to the holder in the amount of any cash amounts payable as a result of the conversion of any shares of Series Preferred into fractional shares of Common Stock, and, if such holder elects not to convert unpaid dividends into Common Stock, all declared and unpaid dividends on such holder's converted Series Preferred. Notwithstanding that any certificate representing the Series Preferred to be converted shall not have been surrendered, each holder of such Series Preferred shall thereafter be treated for all purposes as the record holder of the number of shares of Common Stock issuable to such holder upon such conversion, assuming that such holder had elected to convert all declared or accrued but unpaid dividends on its Series Preferred into Common Stock.

(d) Adjustment of Conversion Price. The Conversion Price of each series of Series Preferred shall be subject to adjustment as follows:

(i) Adjustments for Subdivision, Combinations or Consolidations of Common Stock. In the event that on or after the date that the first share of Series D Preferred is issued (the "Original Issue Date"), the outstanding shares of Common Stock shall be subdivided or increased (by stock split, stock dividend, recapitalization or otherwise) into a greater number of shares of Common Stock, and no equivalent subdivision or increase is made with respect to the Series Preferred, the respective Conversion Price then in effect for each series of Series Preferred shall, concurrently with the effectiveness of such subdivision or increase, be proportionately decreased. 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, the respective Conversion Price then in effect for each series of Series Preferred shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.



(ii) **Adjustments for Other Dividends and Distributions.** In the event that on or after the Original Issue Date, the Corporation pays a dividend or other distribution in securities of the Corporation to holders of Common Stock, and no equivalent dividend or other distribution is made to the holders of Series Preferred, then and in each such event provision shall be made so that the holders of each series of Series Preferred shall receive, concurrently therewith, the amount of such securities which they would have received had their Series Preferred been converted into Common Stock on the date of such event. If the Company fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the Conversion Prices with respect to the Series Preferred shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date.

(iii) **Adjustments for Reclassification, Exchange and Substitution.** In the event that on or after the Original Issue Date, the Common Stock issuable upon conversion of the Series Preferred shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), and no equivalent capital reorganization, reclassification or other change is made with respect to the Series Preferred, the respective Conversion Price then in effect for each series of Series Preferred shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that each series of Series Preferred 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 thereof upon conversion of the Series Preferred immediately before such change.

(e) **Adjustments to Conversion Price of the Senior Preferred for Certain Dilutive Issues.** The Conversion Price of the Senior Preferred only shall be subject to adjustment as follows:

(i) **Special Definitions.** For purposes of this Section 4(e), the following definitions shall apply:

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

(2) *“Convertible Securities”* shall mean any evidence of indebtedness, shares (other than Common Stock) or other securities convertible into or exchangeable for Common Stock.

(3) *“Additional Shares of Common”* shall mean all shares of Common Stock issued (or, pursuant to Section 4(e)(iii), deemed to be issued) by the Corporation on or after the Original Issue Date, other than shares of Common Stock issued or issuable at any time:

(A) upon conversion of the Series Preferred;

(B) up to 3,473,012 shares of Common Stock and/or options, warrants or other Common Stock purchase rights and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof) after the Original Issue Date to employees,

officers or directors of, or consultants or advisors to, the Company or any subsidiary pursuant to stock purchase or stock option plans or other similar arrangements that are approved by the Board, including the majority of directors elected by holders of the Senior Preferred;

(C) pursuant to bank debt, equipment leases and like transactions approved by the Board, including the representatives of the Senior Preferred, the primary purpose of which is not an equity financing;

(D) to strategic investors in connection with one or more transactions (in addition to the transaction of issuing the equity security or the security convertible into or exercisable for any equity security ) being entered into between such investors and the Corporation, and only if the particular transaction in which such investors are participating carries added value for the Corporation above and beyond the monetary investment of such investors, as determined and approved by the Board, including a majority of the directors elected by holders of the Senior Preferred, the primary purpose of which is not an equity financing, and such added value is the subject of a separate written agreement of such strategic investor apart from the investment agreement;

(E) pursuant to any event for which adjustment is made pursuant to this Section 4 (other than this Section 4(e));

(F) that are sold in a Qualified Public Offering;

(G) that are issued pursuant to the exercise of Convertible Securities outstanding as of the Original Issue Date; and

(H) shares with respect to which the holders of 60% of the outstanding shares of Senior Preferred, voting together as a separate class on an as-converted basis, have waived the anti-dilution rights provided for in this Section 4(e).

(ii) **No Adjustment of Conversion Price.** No adjustment in the Conversion Price of the Senior Preferred shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share for an Additional Shares of Common issued or deemed to be issued by the Corporation is less than the applicable Conversion Price of the Senior Preferred in effect on the date of, and immediately prior to, such issuance.

(iii) **Deemed Issuance of Additional Shares of Common.** In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common issued as of the time of such issue, or in the case such a record date shall have been fixed, as of the close of business on such record date; *provided* that Additional Shares of Common shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section 4(e)(v) hereof) of such Additional Shares of Common would be less than the applicable Conversion Price of the Senior Preferred in effect on the date of and immediately prior to such issue, or such record date, as the case may be; and *provided further* that in any such case in which Additional Shares of Common are deemed to be issued:

(A) except as provided in clause (B) below, no further adjustment in the Conversion Price of the Senior Preferred shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

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

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

(b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Corporation for the issuance of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) no readjustment pursuant to clause (B) or (C) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date or (ii) the Conversion Price that would have resulted from any issuance of Additional Shares of Common between the original adjustment date and such readjustment date; and

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

(iv) **Adjustment of Conversion Price of the Senior Preferred Upon Issuance of Additional Shares of Common.** In the event the Corporation shall issue Additional Shares of Common after the Original Issue Date (including Additional Shares of Common deemed

to be issued pursuant to Section 4(e)(iii)) without consideration or for a consideration per share less than the applicable Conversion Price of the Senior Preferred then in effect immediately prior to such issue, then and in such event, the applicable Conversion Price of the Senior Preferred shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue, plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at such Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue, plus the number of such Additional Shares of Common so issued; *provided* that for the purposes of such reduction all shares of Common Stock issuable upon exercise of all outstanding Options and upon conversion of outstanding Convertible Securities shall be deemed to be outstanding, and immediately after any Additional Shares of Common are deemed issued pursuant to Section 4(e)(iii), such Additional Shares of Common shall be deemed to be outstanding.

(v) **Determination of Consideration.** For purposes of this Section 4(e), the consideration received by the Corporation for the issue of any Additional Shares of Common shall be computed as follows:

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

(A) insofar as it consists of cash, be computed at the net amount of cash received by the Corporation excluding expenses, discounts and commissions payable by the Corporation in connection with such issuance or sale and amounts paid or payable for accrued interest;

(B) 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 net of expenses as set forth in clause (A) above; and

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

(2) **Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to Section 4(e)(iii), relating to Options and Convertible Securities, shall be determined by dividing:

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

(y) the maximum number of shares of Common Stock (as

set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities or, in the case of Option for Convertible Securities, the exercise of such options for Convertible Securities and the conversion or exchange of such Convertible Securities.

(3) Stock Dividends. Any Additional Shares of Common deemed to have been issued relating to stock dividends shall be deemed to have been issued for no consideration.

(f) No Impairment. This Corporation will not, by amendment of its Amended and Restated Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issuance 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 this Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against impairment.

(g) Reservation of Common Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series Preferred such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series Preferred, 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 Series Preferred, in addition to such other remedies as shall be available to the holder of such Series Preferred, the Corporation will take such corporate action as may, in the option of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in reasonable efforts to obtain the necessary stockholder approval of any necessary amendment to this Amended and Restated Certificate of Incorporation.

(h) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) all such adjustments and readjustments since the Original Issue Date, (ii) the Conversion Price of each series of Series Preferred at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series Preferred.

(i) Notices of Record Date. Upon (i) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer, or any voluntary or involuntary dissolution, liquidation or winding up of the

Company, the Company shall mail to each holder of Series Preferred at least ten (10) days prior to (x) the record date, if any, specified therein; or (y) if no record date is specified, the date upon which such action is to take effect (or, in either case, such shorter period approved by the holders of 60% of the outstanding Senior Preferred, voting together as a separate class on an as-converted basis) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(j) **Payment of Taxes.** The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series Preferred, 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 Series Preferred so converted were registered.

**Section 5. No Reissuance of Preferred.** No shares of Series Preferred acquired by the Corporation by reason of purchase, conversion or otherwise shall be reissued.

**Section 6. Preemptive Rights.** The stockholders shall have such preemptive rights as are set forth in that certain Amended and Restated Investors' Rights Agreement among the Corporation and certain of its stockholders dated as of May 18, 2008.

## ARTICLE V

The Corporation is to have perpetual existence.

## ARTICLE VI

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

## ARTICLE VII

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.

## ARTICLE VIII

(a) The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent under applicable law.

(b) The Corporation 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 Corporation or any predecessor of the Corporation or serves or

served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation.

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

#### ARTICLE IX

Meetings of the stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation 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 Board or in the Bylaws of the Corporation.

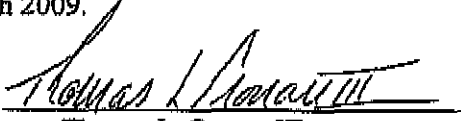
#### ARTICLE X

Subject to any express provision herein to the contrary, the number of authorized shares of Common Stock and Preferred Stock, may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of this Corporation entitled to vote (treating all Preferred Stock on an as converted to Common Stock basis), irrespective of the provisions of Section 242(b)(2) of the DGCL.

#### ARTICLE XI

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

**IN WITNESS WHEREOF**, the Corporation has caused this Amended and Restated Certificate of Incorporation to be duly executed this 18th day of March 2009.

By:   
Name: Thomas L. Cronan III  
Title: Chief Financial Officer