

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF  
BANDSPEED, INC.

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

- A. The original Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on July 29, 1998.
- B. This Amended and Restated Certificate of Incorporation (the "*Restated Certificate*") has been duly adopted pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware.
- C. This Restated Certificate of Incorporation was approved by written consent of the stockholders pursuant to Section 228 of the General Corporation Law of the State of Delaware.
- D. The Certificate of Incorporation of the corporation, as heretofore amended and restated, is hereby amended and restated in its entirety to read as follows:

ARTICLE I

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

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 15 East North Street in the City of Dover, County of Kent. The name of its registered agent at such address is Incorporating Services, Ltd.

ARTICLE III

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

The Corporation is authorized to issue two classes of stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*." The total number of shares which the Corporation is authorized to issue is 186,950,000 shares. Of the total number of authorized shares, 104,850,552 shares shall be Common Stock and 82,099,448 shares shall be Preferred Stock.

Of the authorized Preferred Stock 619,340 shares shall be designated "Series A-1 Preferred Stock" (hereinafter "*Series A-1 Preferred*"), 1,780,108 shares shall be designated "Series B-1 Preferred Stock" (hereinafter "*Series B-1 Preferred*"), 64,000,000 shares shall be designated

"Series C-1 Preferred Stock" (hereinafter "*Series C-1 Preferred*"), 15,700,000 shares shall be designated "Series D Preferred Stock" (hereinafter "*Series D Preferred*"; Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, and Series D Preferred are referred to collectively as the "*Preferred Stock*") each of which shall have a par value of \$0.01 per share; the Common Stock shall have a par value of \$0.01 per share.

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

1. Dividends.

(a) The holders of outstanding Series D Preferred shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) on the Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred or Common Stock at the rate of \$0.041 per share of Series D Preferred (adjusted for any subdivisions, splits, combinations, consolidations, reorganizations, recapitalizations or stock distributions or stock dividends with respect to such share effected after the date this Restated Certificate was filed with the Secretary of State) per annum, payable when, as and if declared by the Board of Directors of the Corporation (the "*Board*"). From the date on which the Corporation issued its first share of Series D Preferred (the "*Series D Original Issue Date*") until the fifth anniversary of the Series D Original Issue Date, the right to dividends on shares of Series D Preferred shall not be cumulative, and no right shall accrue to holders of any shares because dividends on such shares are not declared or paid in any prior period, nor shall any undeclared or unpaid dividend with respect to such period bear or accrue interest. With respect to any shares of Series D Preferred that have not been converted to Common Stock by the fifth anniversary of the Series D Original Issue Date, dividends upon such shares of Series D Preferred shall begin to accumulate from the date of the fifth anniversary of the Series D Original Issue Date, calculated monthly in arrears and prorated on a daily basis for periods of less than one month. If, after the date of the fifth anniversary of the Series D Original Issue Date, a share of Series D Preferred is outstanding for less than a full month, the dividends shall accumulate for that month on a pro rata basis based on the number of days that such Series D Preferred was outstanding during that month. Upon conversion of the Series D Preferred pursuant to Section 4(a) or (b) of this Article IV, an amount equal to all dividends declared or accumulated but unpaid shall be payable (i) in shares of Common Stock at the Series D Conversion Price determined as hereinafter provided, in effect at the time of the conversion, or (ii) in cash, as determined in good faith by the Board. No dividends shall be declared or paid, and no distribution shall be made, on any shares of Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred or Common Stock unless all dividends declared or accrued but unpaid on the Series D Preferred have been paid or set apart for payment.

(b) Subject to the preferential rights of the Series D Preferred, the holders of outstanding Series C-1 Preferred shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) on the Series A-1

Preferred, Series B-1 Preferred, or Common Stock at the rate of \$0.041 per share of Series C-1 Preferred (adjusted for any subdivisions, splits, combinations, consolidations, reorganizations, recapitalizations or stock distributions or stock dividends with respect to such share effected after the date this Restated Certificate was filed with the Secretary of State) per annum, payable when, as and if declared by the Board. From the Series D Original Issue Date until the fifth anniversary of the Series D Original Issue Date, the right to dividends on shares of Series C-1 Preferred shall not be cumulative, and no right shall accrue to holders of any shares because dividends on such shares are not declared or paid in any prior period, nor shall any undeclared or unpaid dividend with respect to such period bear or accrue interest. With respect to any shares of Series C-1 Preferred that have not been converted to Common Stock by the fifth anniversary of the Series D Original Issue Date, dividends upon such shares of Series C-1 Preferred shall begin to accumulate from the date of the fifth anniversary of the Series D Original Issue Date, calculated monthly in arrears and prorated on a daily basis for periods of less than one month. If, after the date of the fifth anniversary of the Series D Original Issue Date, a share of Series C-1 Preferred is outstanding for less than a full month, the dividends shall accumulate for that month on a pro rata basis based on the number of days that such Series C-1 Preferred was outstanding during that month. Upon conversion of the Series C-1 Preferred pursuant to Section 4(a) or (b) of this Article IV, an amount equal to all dividends declared or accumulated but unpaid shall be payable (i) in shares of Common Stock at the Series C-1 Conversion Price determined as hereinafter provided, in effect at the time of the conversion, or (ii) in cash, as determined in good faith by the Board. No dividends shall be declared or paid, and no distribution shall be made, on any shares of Series A-1 Preferred, Series B-1 Preferred, or Common Stock unless all dividends declared or accrued but unpaid on the Series C-1 Preferred have been paid or set apart for payment. After the payment or setting aside for payment of the dividends described in Section 1(a) and Section 1(b) any additional dividends (payable other than in shares of Common Stock) declared or paid in any year shall be declared or paid among the holders of Series D Preferred, Series C-1 Preferred, and Common Stock then outstanding based on the number of shares of Common Stock held by each such holder (assuming full conversion of the Series D Preferred and Series C-1 Preferred.) Any amounts for which assets are not legally available shall be paid promptly as assets become legally available therefor.

(c) Subject to the preferential rights of the Series D Preferred and the Series C-1 Preferred, the holders of outstanding Series A-1 Preferred and Series B-1 Preferred shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock at the rate of \$0.15 per share of Series A-1 Preferred (adjusted for any subdivisions, splits, combinations, consolidations, reorganizations, recapitalizations or stock distributions or stock dividends with respect to such share effected after the date this Restated Certificate was filed with the Secretary of State) and the greater of \$0.8025 or the amount declared on any other class or series of the Corporation's equity securities per share of Series B-1 Preferred (adjusted for any subdivisions, splits, combinations, consolidations, reorganizations, recapitalizations or stock distributions or stock dividends with respect to such share effected after the date this Restated Certificate was filed with the Secretary of State), per annum, payable when, as and if declared by the Board. In the event that any dividends are declared or paid with respect to the holders of the Series A-1 Preferred, appropriate dividends shall be simultaneously declared or paid, as the case may be, with respect to the holders of the Series B-1 Preferred. The

right to dividends on shares of Series A-1 Preferred and Series B-1 Preferred shall not be cumulative, and no right shall accrue to holders of any shares because dividends on such shares are not declared or paid in any prior year, nor shall any undeclared or unpaid dividend bear or accrue interest. Any amounts for which assets are not legally available shall be paid promptly as assets become legally available therefor.

(d) Notwithstanding paragraph (a), (b) and (c) hereof, the Corporation may at any time, out of funds legally available therefor, upon the approval of the Board (including at least one Series D Director (as defined below)), repurchase shares of Common Stock of the Corporation issued to or held by directors, employees, or consultants of the Corporation or its subsidiaries upon termination of their employment or services, pursuant to any agreement providing for such right of repurchase, whether or not dividends on the Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred or Series D Preferred shall have been paid and whether or not such dividends shall have been declared and funds set aside therefor.

## **2. Liquidation Preference.**

(a) "*Liquidation Transaction*" shall mean, unless otherwise determined by the holders of at least seventy percent (70%) of the Series D Preferred then outstanding, voting on an as-converted to Common Stock basis, any:

(i) transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) which will result in the Corporation's stockholders immediately prior to such transaction not holding (by virtue of such shares or securities issued solely with respect thereto) at least a majority of the voting power of the surviving or continuing entity, provided that this Section 2(a)(i) shall not apply to a merger effected exclusively for the purpose of changing the domicile of the Corporation, or to an equity financing in which the Corporation is the sole surviving entity;

(ii) sale, lease or other disposition of all or substantially all of the assets of the Corporation; or

(iii) liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

(b) In the event of any Liquidation Transaction, the Corporation shall take appropriate steps in connection with such Liquidation Transaction to ensure that the assets of the Corporation legally available for distribution or such other property issued in connection with such Liquidation Transaction shall be distributed at the closing of the Liquidation Transaction in the order and priority that follows:

(i) The holders of the Series D Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred and the Common Stock by reason of their ownership of such stock, an amount equal to the product of (a) 2.5 multiplied by (b) \$0.515 per share (the "*Series D Original Issue Price*") for each share of Series D

Preferred then held by them (adjusted for any subdivisions, splits, combinations, consolidations, reorganizations, recapitalizations or stock distributions or stock dividends with respect to such share effected after the date this Restated Certificate was filed with the Secretary of State) plus an amount equal to all declared or accrued but unpaid dividends on the Series D Preferred held by them. If upon the occurrence of a Liquidation Transaction, the assets and funds available for distribution among the holders of the Series D Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series D Preferred in proportion to the number of shares of Series D Preferred held by each such holder.

(ii) Upon completion of the distribution required by Section 2(b)(i) above, the holders of the Series C-1 Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series A-1 Preferred, Series B-1 Preferred and the Common Stock by reason of their ownership of such stock, the amount of \$0.515 per share (the "*Series C-1 Original Issue Price*") for each share of Series C-1 Preferred then held by them (adjusted for any subdivisions, splits, combinations, consolidations, reorganizations, recapitalizations or stock distributions or stock dividends with respect to such share effected after the date this Restated Certificate was filed with the Secretary of State) plus an amount equal to all declared or accrued but unpaid dividends on the Series C-1 Preferred held by them. If upon the occurrence of a Liquidation Transaction, the assets and funds available for distribution among the holders of the Series C-1 Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series C-1 Preferred in proportion to the number of shares of Series C-1 Preferred held by each such holder.

(iii) Upon completion of the distributions required by Section 2(b)(i) and Section 2(b)(ii) above, the holders of the Series A-1 Preferred and the Series B-1 Preferred shall be entitled to receive, on a pari passu basis, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, the amount of (i) in the case of the Series A-1 Preferred, \$2.0454 per share for each share of Series A-1 Preferred then held by them (adjusted for any subdivisions, splits, combinations, consolidations, reorganizations, recapitalizations or stock distributions or stock dividends with respect to such share effected after the date this Restated Certificate was filed with the Secretary of State) plus an amount equal to all declared but unpaid dividends on the Series A-1 Preferred held by them, and (ii) in the case of the Series B-1 Preferred, \$8.025 per share for each share of Series B-1 Preferred then held by them (adjusted for any subdivisions, splits, combinations, consolidations, reorganizations, recapitalizations or stock distributions or stock dividends with respect to such share effected after the date this Restated Certificate was filed with the Secretary of State) plus an amount equal to all declared but unpaid dividends on the Series B-1 Preferred held by them. If, upon the occurrence of a Liquidation Transaction, the assets and funds available for distribution among the holders of the Series B-1 Preferred and Series A-1 Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A-1 Preferred and the Series B-1 Preferred in proportion to the full aforesaid preferential amounts to which each such holder is entitled.

(c) After payment has been made to the holders of the Series D Preferred, Series C-1 Preferred, Series B-1 Preferred and Series A-1 Preferred of the full amounts to which they shall be entitled as set forth in Section 2(a) and 2(b) above, the remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed ratably to all holders of the Series D Preferred, Series C-1 Preferred, Series B-1 Preferred, Series A-1 Preferred and Common Stock, on an as-converted to Common Stock basis in a manner such that the amount distributed to each holder of Common Stock and Preferred Stock shall equal the amount obtained by multiplying the entire remaining assets and funds of the Corporation legally available for distribution hereunder by a fraction, the numerator of which shall be the number of shares of Common Stock and Preferred Stock, on an as-converted to Common Stock basis, then held by such holder, and the denominator of which shall be the total number of shares of Common Stock and Preferred Stock, on an as-converted to Common Stock basis, then outstanding; provided, however that, the holders of Series B-1 Preferred and Series A-1 Preferred shall cease to receive legally available funds of the Corporation pursuant to this Section 2(c) under the following conditions:

(i) the holders of Series A-1 Preferred shall cease to receive assets and funds pursuant to this Section 2(c) when the holders of Series A Preferred have received an aggregate amount, under this Section 2, of \$6.1362 per share of Series A-1 Preferred then held by them (adjusted for any subdivisions, splits, combinations, consolidations, reorganizations, recapitalizations or stock distributions or stock dividends with respect to such shares effected after the date this Restated Certificate was filed with the Secretary of State) plus an amount equal to all declared but unpaid dividends on the Series A-1 Preferred held by them; and

(ii) the holders of Series B-1 Preferred shall cease to receive assets and funds pursuant to this Section 2(c) when the holders of Series B-1 Preferred have received an aggregate amount, under this Section 2, of \$24.075 per share of Series B-1 Preferred then held by them (adjusted for any subdivisions, splits, combinations, consolidations, or stock distributions or stock dividends with respect to such shares effected after the date this Restated Certificate was filed with the Secretary of State) plus an amount equal to all declared but unpaid dividends on the Series B-1 Preferred held by them.

(d) Any securities to be delivered to the stockholders pursuant to this Section 2 shall be valued as follows:

(i) If traded on a national securities exchange or the National Market System of the Nasdaq Stock Market, Inc., the value shall be deemed to be the average of the closing prices of the securities on such exchange over the (thirty) 30-day period ending three (3) days prior to the closing;

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

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

3. Voting.

(a) General. Except as otherwise provided herein or required by law, the holders of the Common Stock and the Preferred Stock shall vote together as a single class. Except as otherwise provided herein or required by law, the holder of each share of Common Stock issued and outstanding shall have one vote and the holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock could be converted at the record date for determination of the stockholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited, such votes to be counted together with all other shares of stock of the Corporation having a general voting power and not separately as a class. Holders of Common Stock and Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes by the holders of Preferred Stock shall not, however, be permitted and any fractional voting rights shall (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) be rounded to the nearest whole number (with one-half being rounded upward).

(b) Directors. For so long as any shares of Series D Preferred are outstanding, the holders of Series D Preferred, voting as a single class, shall be entitled to elect three (3) members of the Board (each, a "*Series D Director*," and together the "*Series D Directors*") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. The holders of the Common Stock and Preferred Stock, voting as a single class on an as converted to Common Stock basis, shall be entitled to elect the remaining authorized members of the Board at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. In the case of any vacancy in the office of a director occurring among the directors elected by the holders of the Series D Preferred Stock pursuant to this Section 3(b) hereof, the remaining director or directors so elected by the holders of the Series D Preferred may, by affirmative vote of a majority thereof (or the remaining director so elected if there is but one, or if there is no such director remaining, by the affirmative vote of the holders of a majority of the outstanding shares of that class) elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. Any Series D Director or any director so elected as provided in the preceding sentence hereof, may be removed during the aforesaid term of office, whether with or without cause, only by the affirmative vote of the holders of a majority of the Series D Preferred.

(c) Adjustment in Authorized Common Stock. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by an affirmative vote of the holders of a majority of the Preferred Stock and Common Stock, voting together as a single class on an as-converted to Common Stock basis, and without the separate affirmative vote of the holders of a majority of the Common Stock entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

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

(a) Right to Convert. Each share of Series A-1 Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of

the Corporation or any transfer agent for the Series A-1 Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$2.0454 by the Series A-1 Conversion Price, determined as hereinafter provided, in effect at the time of the conversion. As of the date this Restated Certificate is filed with the Secretary of State, the price at which shares of Common Stock shall be deliverable upon conversion of shares of the Series A-1 Preferred (the "*Series A-1 Conversion Price*") shall initially be \$2.0454 per share of Common Stock. Such initial Series A-1 Conversion Price shall be subject to adjustment as hereinafter provided. Each share of Series B-1 Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Series B-1 Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$8.025 by the Series B-1 Conversion Price, determined as hereinafter provided, in effect at the time of the conversion. As of the date this Restated Certificate is filed with the Secretary of State, the price at which shares of Common Stock shall be deliverable upon conversion of shares of the Series B-1 Preferred (the "*Series B-1 Conversion Price*") shall be \$8.025 per share of Common Stock. Such initial Series B-1 Conversion Price shall be subject to adjustment as hereinafter provided. Each share of Series C-1 Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Series C-1 Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series C-1 Original Issue Price by the Series C-1 Conversion Price, determined as hereinafter provided, in effect at the time of the conversion. As of the date this Restated Certificate is filed with the Secretary of State, the price at which shares of Common Stock shall be deliverable upon conversion of shares of the Series C-1 Preferred (the "*Series C-1 Conversion Price*") shall initially be \$0.515 per share of Common Stock. Such initial Series C-1 Conversion Price shall be subject to adjustment as hereinafter provided. Each share of Series D Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Series D Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series D Original Issue Price by the Series D Conversion Price, determined as hereinafter provided, in effect at the time of the conversion. The price at which shares of Common Stock shall be deliverable upon conversion of shares of the Series D Preferred (the "*Series D Conversion Price*") shall initially be \$0.515 per share of Common Stock. Such initial Series D Conversion Price shall be subject to adjustment as hereinafter provided.

Upon conversion, all declared or accrued and unpaid dividends on the Preferred Stock shall be paid either in cash or in shares of Common Stock of the Corporation, at the election of the Corporation, wherein the shares of Common Stock shall be valued at the fair market value at the time of such conversion, as determined in good faith by the Board.

(b) Automatic Conversion.

(i) Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Series A-1 Conversion Price, Series B-1 Conversion Price, Series C-1 Conversion Price and Series D Conversion Price, as applicable immediately prior to the closing of a firm underwritten public offering pursuant to an effective registration statement



under the Securities Act of 1933, as amended (other than a registration relating solely (A) to a transaction under Rule 145 under such Act (or any successor thereto) or (B) to an employee benefit plan of the Corporation), covering the offer and sale of shares of the Corporation's Common Stock which generates gross proceeds of not less than \$25,000,000 (before deduction of underwriter commissions and offering expenses) and in which the Corporation has a pre-money valuation (equal to the number of shares of Common Stock outstanding (assuming the conversion of all outstanding shares of Preferred Stock into Common Stock and the exercise of all granted and outstanding options whether vested or not) at the effective time of an offering multiplied by the initial price to the public in such offering) of at least \$100,000,000 (a "*Qualified IPO*"). In the event of the automatic conversion of the Preferred Stock upon a public offering as aforesaid, the person(s) entitled to receive the Common Stock issuable upon such conversion of Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(ii) Prior to a Qualified IPO, each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Series A-1 Conversion Price, Series B-1 Conversion Price, Series C-1 Conversion Price and Series D Conversion Price, as applicable upon the date specified by vote or written consent or agreement of the holders of at least seventy percent (70%) of the Series D Preferred then outstanding, voting or acting as a single and separate class (each of (i) and (ii) being an "*Event of Conversion*").

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, or Series D Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled (after aggregating all shares of Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, or Series D Preferred held by such holder such that the maximum number of whole shares of Common Stock is issued to such holder upon conversion), the Corporation shall pay cash equal to such fraction multiplied by the then effective Series A-1 Conversion Price, Series B-1 Conversion Price, Series C-1 Conversion Price, or Series D Conversion Price, respectively. Before any holder of Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, or Series D Preferred shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that he elects to convert the same; provided, however, that in the event of an automatic conversion pursuant to paragraph (b) hereof, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; and provided, further, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, or Series D Preferred, as applicable, are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates.

The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Series A-1 Preferred, Series B-1

Preferred, Series C-1 Preferred, or Series D Preferred, as applicable, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, or Series D Preferred to be converted, or, in the case of automatic conversion, on the date of closing of the offering or the date of written election to convert, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) Adjustments for Dilutive Issuances.

A. Special Definitions. For purposes of this Section 4(d), 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; provided, however, that the term “*Options*” shall exclude any rights, options or warrants issued or granted to the parties described in Sections 4(d)(i)(A)(4)(b) or (c) of this Article IV.

(2) “*Series D Original Issue Date*” shall mean the date on which the first share of Series D Preferred was first issued.

(3) “*Convertible Securities*” shall mean any evidences of indebtedness, shares (other than Common Stock, Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, or Series D Preferred) or other securities convertible into or exchangeable for Common Stock; provided, however, that the term “*Convertible Securities*” shall exclude any rights, options or warrants issued or granted to the parties described in Sections 4(d)(i)(A)(4)(b) or (c) of this Article IV.

(4) “*Additional Shares of Common Stock*” shall mean all shares of Common Stock issued (or, pursuant to Section 4(d)(i)(C) of this Article IV, deemed to be issued) by the Corporation after the Series D Original Issue Date, other than shares of Common Stock issued or issuable:

(a) upon conversion of the Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, or Series D Preferred; or

(b) upon exercise of warrants outstanding as of the Series D Original Issue Date; or

(c) to officers, directors and employees of, and consultants to, the Corporation or any subsidiary of the Corporation pursuant to an option plan, purchase plan or other officer, director, employee or consultant incentive plan or pursuant to stock

grants or any other plan or arrangement approved by the Board, including at least one Series D Director in the event of any approval by the Board after the Series D Original Issue Date (collectively, the "*Stock Plans*"), to the extent that the shares reserved for issuance upon exercise of stock options already granted and to be granted pursuant to these Stock Plans (including shares already issued pursuant to exercise of options issued under such Stock Plans) do not exceed an aggregate of 15,350,000 shares (adjusted for any subdivisions, splits, combinations, consolidations, reorganizations, recapitalizations or stock distributions or stock dividends with respect to such shares effected after the date this Restated Certificate was filed with the Secretary of State); or

(d) in connection with credit arrangements with banks, equipment lease financings and other similar transactions approved by the Board, including at least one Series D Director; or

(e) in connection with bona fide acquisitions, mergers and other similar transactions approved by the Board, including at least one Series D Director; or

(f) in connection with collaboration, technology, license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board, including at least one Series D Director; or

(g) as a dividend or distribution on the Series A-1 Preferred, the Series B-1 Preferred, the Series C-1 Preferred, or Series D Preferred or pursuant to any event for which adjustment is made pursuant to subparagraph (d)(ii), (iii) or (iv) hereof; or

(h) pursuant to a Qualified IPO; or

(i) shares of Series A-1 Preferred, Series B-1 Preferred, Series C-1 Preferred, or Series D Preferred issued pursuant to that certain Series D Stock Purchase Agreement dated on or about the date of the filing of this Restated Certificate with the Secretary of State.

(5) "*Issue Price*" with respect to any issuance of Additional Shares of Common Stock shall mean the price per share obtained by dividing the total consideration received by the Corporation in respect of such Additional Shares of Common Stock, computed in accordance with Section 4(d)(i)(E) hereof, by the aggregate number of shares of such Additional Shares of Common Stock issued, computed in accordance with Section 4(d)(i)(C) hereof.

B. No Adjustment of Conversion Price.

(1) Any provision herein to the contrary notwithstanding, no adjustment in the Series A-1 Conversion Price, the Series B-1 Conversion Price, the Series C-1 Conversion Price or the Series D Conversion Price shall be made hereunder in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section 4(d)(i)(E) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Series D Conversion Price in effect on the date of, and immediately prior to, such issuance.

(2) No adjustment of the Series A-1 Conversion Price, Series B-1 Conversion Price, Series C-1 Conversion Price and/or Series D Conversion Price shall be made in an amount less than one cent per share, provided, however, that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be taken into account in any subsequent adjustment made to the Series A-1 Conversion Price, Series B-1 Conversion Price, Series C-1 Conversion Price and/or Series D Conversion Price.

C. Deemed Issue of Additional Shares of Common Stock.

(1) Options and Convertible Securities. Except as otherwise provided in Section 4(d)(i)(B) of this Article IV, in the event the Corporation at any time or from time to time after the Series D 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 or Options for Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue of Options or Convertible Securities or, in 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 Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section 4(d)(i)(E) hereof) of such Additional Shares of Common Stock would be less than the Series D Conversion Price in effect on the date of and immediately prior to such issue, or such record date; and provided, further, that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(a) no further adjustment in the Series A-1 Conversion Price, Series B-1 Conversion Price, Series C-1 Conversion Price, or Series D Conversion Price 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) 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 Series A-1 Conversion Price, Series B-1 Conversion Price, Series C-1 Conversion Price, or Series D Conversion Price, as applicable, 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:

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

additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

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

(c) no readjustment pursuant to clause (b) above shall have the effect of increasing the Series A-1 Conversion Price, the Series B-1 Conversion Price, the Series C-1 Conversion Price, or the Series D Conversion Price to an amount which exceeds the lower of (i) the Series A-1 Conversion Price, the Series B-1 Conversion Price, the Series C-1 Conversion Price, or the Series D Conversion Price, as applicable, immediately prior to the original adjustment date, or (ii) the Series A-1 Conversion Price, the Series B-1 Conversion Price, the Series C-1 Conversion Price, or the Series D Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and

(d) in the case of Options which expire by their terms not more than thirty (30) days after the date of issue thereof, no adjustment of the Series A-1 Conversion Price, the Series B-1 Conversion Price, the Series C-1 Conversion Price, or the Series D Conversion Price, as applicable, shall be made until the expiration or exercise of all such Options.

D. Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall after the Series D Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(i)(C) of this Article IV) without consideration or for a consideration per share less than the Series D Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, each of the Series A-1 Conversion Price, the Series B-1 Conversion Price, the Series C-1 Conversion Price, and the Series D Conversion Price 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 Stock so issued would purchase at such Conversion Price in effect immediately prior to such issuance, 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 Stock so issued. For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated as if all shares of Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock immediately prior to such issuance and any outstanding warrants, options or other rights for the purchase of shares of stock or convertible securities had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into shares of Common Stock, if so

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

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

(1) Cash and Property: Such consideration shall:

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(b) insofar as it consists of services or 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; and

(c) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (a) and (b) above, allocated to such Additional Shares of Common Stock 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 Stock deemed to have been issued pursuant to Section 4(d)(i)(C), relating to Options and Convertible Securities, shall be determined by dividing

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

(b) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise in full of such Options or the conversion or exchange in full of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise in full of such Options for Convertible Securities and the conversion or exchange in full of such Convertible Securities.

(ii) Adjustments for Subdivisions, Combinations or Consolidations of Common Stock. In the event after the date of the filing of this Restated Certificate with the Secretary of State the outstanding shares of Common Stock shall be subdivided (by stock split, stock dividend or otherwise), into a greater number of shares of Common Stock, the Series A-1 Conversion Price, Series B-1 Conversion Price, the Series C-1 Conversion Price, and Series D Conversion Price then in effect shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event after the date of the filing of this Restated Certificate with the Secretary of State 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 Series A-1 Conversion Price, Series B-1 Conversion Price, the Series C-1 Conversion Price, and Series D Conversion Price then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(iii) Adjustments for Other Distributions. In the event the Corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, any distribution payable in securities of the Corporation other than shares of Common Stock and other than as otherwise adjusted in this Section 4, then and in each such event provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation which they would have received had their shares of Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 4 with respect to the rights of the holders of the Preferred Stock.

(iv) Adjustments for Reclassification, Exchange and Substitution. If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision, combination or consolidation of shares provided for above), the Series A-1 Conversion Price, the Series B-1 Conversion Price, the Series C-1 Conversion Price, and the Series D Conversion Price, as applicable, then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Preferred Stock, as applicable, shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of such shares of Preferred Stock immediately before that change.

(e) No Impairment. The Corporation will not, through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the 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. This provision shall not restrict the Corporation's rights to amend this Restated Certificate with the requisite stockholder consent or approval.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A-1 Conversion Price, the Series B-1 Conversion Price, the Series C-1 Conversion Price, and the Series D 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 Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series A-1 Conversion Price, the Series B-1 Conversion Price, the Series C-1 Conversion Price, and the Series D Conversion Price 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 such holder's shares of Preferred Stock.

## 5. Redemption.

(a) Redemption at Option of Holders of a Majority of Series D Preferred. At any time after the fifth anniversary of the Series D Original Issue Date, the holders of at least a majority of the then outstanding Series D Preferred, voting as a single class, may request that all or, if less than all, a specified percentage of such holders' respective shares of Series D Preferred be redeemed by the Corporation. Within forty-five (45) days after the receipt by the Corporation of a written request for such redemption from such holders, and concurrently with surrender by such holders of the certificates representing such shares, the Corporation shall, to the extent it may lawfully do so, redeem in three (3) annual installments (each payment date being referred to herein as a "Series D Redemption Date") the shares specified in such request by paying in cash therefor an amount per share equal to the Series D Original Issue Price plus an additional amount equal to any dividends declared or accrued but unpaid on each such share (the "Series D Redemption Price"). The number of shares of Series D Preferred that this Corporation shall be required to redeem on each Series D Redemption Date shall be equal to the amount determined by dividing (i) the aggregate number of shares of Series D Preferred outstanding immediately prior to any such Series D Redemption Date that have been requested to be redeemed pursuant to this subsection (a) by (ii) the number of remaining Series D Redemption Dates (including the Series D Redemption Date to which such calculation applies). Any redemption effected pursuant to this Section 5(a) shall be made on a pro rata basis among the holders of Series D Preferred to be redeemed in proportion to the number of shares of Series D Preferred then held by such holders.

(b) Redemption at Option of Holders of a Majority of Series C-1 Preferred. At any time after the fifth anniversary of the Series D Original Issue Date, the holders of at least a majority of the then outstanding Series C-1 Preferred, voting as a single class, may request that all or, if less than all, a specified percentage of such holders' respective shares of Series C-1 Preferred be redeemed by the Corporation; provided, however that no shares of Series C-1 Preferred may be redeemed on any Series C-1 Redemption Date pursuant to this Section 5(b) unless and until all shares of Series D Preferred required to be redeemed on such date pursuant to Section 5(a) above, if any, have been so redeemed. Within forty-five (45) days after the receipt by the Corporation of a



written request for such redemption from such holders, and concurrently with surrender by such holders of the certificates representing such shares, the Corporation shall, to the extent it may lawfully do so, redeem in three (3) annual installments (each payment date being referred to herein as a "Series C-1 Redemption Date") the shares specified in such request by paying in cash therefor an amount per share equal to the Series C-1 Original Issue Price plus an additional amount equal to any dividends declared or accrued but unpaid on each such share (the "Series C-1 Redemption Price"). The number of shares of Series C-1 Preferred that this Corporation shall be required to redeem on each Series C-1 Redemption Date shall be equal to the amount determined by dividing (i) the aggregate number of shares of Series C-1 Preferred outstanding immediately prior to any such Series C-1 Redemption Date that have been requested to be redeemed pursuant to this subsection (a) by (ii) the number of remaining Series C-1 Redemption Dates (including the Redemption Date to which such calculation applies). Any redemption effected pursuant to this Section 5(b) shall be made on a pro rata basis among the holders of Series C-1 Preferred to be redeemed in proportion to the number of shares of Series C-1 Preferred then held by such holders. The Series D Redemption Date and the Series C-1 Redemption Date are each referred to herein as a "Redemption Date". The Series D Redemption Price and the Series C-1 Redemption Price are each referred to herein as a "Redemption Price".

(c) Redemption Procedure. At least twenty (20) days prior to each Redemption Date, written notice (the "Redemption Notice") shall be mailed, postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Series D Preferred or Series C-1 Preferred to be redeemed, at the address last shown on the records of the Corporation for such holder or given by the holder to the Corporation for the purpose of notice or if no such address appears or is given, at the place where the principal executive office of the Corporation is located, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the applicable Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, its certificate or certificates representing the shares to be redeemed. Except as provided in subsection (d) below, on or after each Redemption Date, each holder of Series D Preferred or Series C-1 Preferred to be redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the aggregate Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(d) Effect of Redemption. From and after each Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of the shares of Series D Preferred or Series C-1 Preferred, as applicable, to be redeemed on a Redemption Date (except the right to receive their respective Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption on any Redemption Date are insufficient to redeem the total number of shares requested to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of

such shares ratably among the holders of such shares to be redeemed based upon their holdings of Series D Preferred or Series C-1 Preferred, as the case may be. The shares not redeemed shall remain outstanding and be entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares not redeemed, such funds will immediately be set aside for the redemption of the balance of the shares which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed.

(e) Redemption Funding. On or prior to each Redemption Date, the Corporation shall deposit the applicable Redemption Price of all shares of Series D Preferred or Series C-1 Preferred designated for redemption in the Redemption Notice, and not yet redeemed or converted, with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed. Simultaneously, the Corporation shall deposit irrevocable instructions and authority to such bank or trust company to pay, on and after the date fixed for redemption or prior thereto, the applicable Redemption Price to the holders of Series D Preferred and/or Series C-1 Preferred, as the case may be, upon receipt of notification from the Corporation that such holder has surrendered such holder's certificates pursuant to subsection (c) above. Any money deposited by the Corporation pursuant to this subsection (e) for the redemption of shares which are thereafter converted into shares of Common Stock no later than the close of business on the last business day prior to the Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any money deposited by the Corporation pursuant to this subsection (e) remaining unclaimed at the expiration of six months following the Redemption Date shall thereafter be returned to the Corporation, provided that the stockholder to which such money would be payable hereunder shall be entitled, upon proof of its ownership of the Series D Preferred or Series C-1 Preferred and payment of any bond requested by the Corporation, to receive such monies but without interest from the Redemption Date.

## **6. Protective Provisions.**

(a) In addition to any vote required herein or by law and any other rights provided by law, so long as at least 4,000,000 shares of Series D Preferred (adjusted for any subdivisions, splits, combinations, consolidations, reorganizations, recapitalizations or stock distributions or stock dividends with respect to such shares effected after the date this Restated Certificate was filed with the Secretary of State) remain outstanding, the Corporation shall not, without obtaining the prior affirmative vote or written consent of the holders of at least two-thirds (2/3) of the Series D Preferred then outstanding, voting together as a single and separate class:

(i) subject to subsections (b), (c), and (d) below, authorize or issue any class or series of equity security having any preference or priority as to voting, dividends or distribution of assets upon liquidation, merger or otherwise which is superior to or on a parity with any such preference or priority of any series of Preferred Stock;

(ii) amend the Corporation's Certificate of Incorporation (including by merger, consolidation or otherwise) or Bylaws;

(iii) decrease (other than by conversion) or increase the number of authorized shares of Preferred Stock;

(iv) increase the size of the Board to more than five members;

(v) sell all or substantially all of its assets, or merge into or consolidate with any other entity (other than a wholly owned subsidiary corporation), or effect any transaction or series of related transactions in which the Corporation's stockholders as constituted immediately prior to such transaction or series of related transactions own immediately after such transaction or series of related transactions less than fifty percent (50%) of the voting power of the surviving or acquiring entity;

(vi) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any shares of Common Stock; *provided, however*, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation pursuant to agreements under which the Corporation has the right to repurchase such shares upon the occurrence of certain events, such as the termination of services;

(vii) redeem, purchase or otherwise acquire for value (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock, other than pursuant to the terms of Section 5 of this Article IV;

(viii) pay or declare a dividend on any shares of capital stock;

(ix) permit any subsidiary to issue or sell, or obligate itself to issue or sell, except to the Corporation or any wholly owned subsidiary, any stock of such subsidiary;

(x) make any loans or advances to employees, except in the ordinary course of business as part of travel advances or salary, unless unanimously approved by the Board;

(xi) mortgage or pledge, or create a security interest in, or permit any subsidiary to mortgage, pledge or create a security interest in, all or substantially all of the property of the Corporation or such subsidiary, unless unanimously approved by the Board; or

(xii) dissolve, liquidate or wind up the Corporation.

(b) In addition to any vote required herein or by law and any other rights provided by law, so long as at least 4,000,000 shares of Series D Preferred (adjusted for any subdivisions, splits, combinations, consolidations, reorganizations, recapitalizations or stock distributions or stock dividends with respect to such shares effected after the date this Restated Certificate was filed with the Secretary of State) remain outstanding, the Corporation shall not, without obtaining the prior affirmative vote or written consent of the holders of seventy percent (70%) of the Series D Preferred, voting together as a single and separate class:

(i) take any action (including amending the Corporation's Certificate of Incorporation, changing the powers, preferences or special rights of the shares of any other series or

by way of merger, consolidation or otherwise) that would alter or change adversely the powers, preferences or special rights of the Series D Preferred; provided, however, that the Corporation's authorization of additional shares of an existing class or series of equity securities, the issuance of additional shares thereof, or the authorization or issuance of any class or series of equity securities having any preference or priority as to voting, dividends or distribution of assets upon liquidation, merger or otherwise, which is superior to or on parity with any such preference or priority of the Series D Preferred shall not be deemed to alter or change adversely the powers, preferences or special rights of the Series D Preferred; provided, further, that any such authorization that includes any provision for conversion of shares of Preferred Stock into shares of Common Stock in the event of a holder's failure to purchase shares so authorized (a pay to play) shall be deemed to so alter or change adversely the powers, preferences or special rights of the Series D Preferred.

(ii) issue securities in connection with a merger, acquisition or other similar transaction that would represent, prior to such issuance, more than 30% of the outstanding capital stock of the Corporation; or

(iii) acquire any equity or similar interest in, directly or indirectly, or any interest convertible into or exchangeable or exercisable for any equity or similar interest in, any corporation, partnership, joint venture, limited liability company or other business association or entity; provided, that this subsection 6(b)(iii) shall not apply to equity or similar interests having a value, as based on consideration paid or the good faith valuation of the Board, of \$100,000 or less.

(c) In addition to any vote required herein or by law and any other rights provided by law, so long as at least 10,000,000 shares of Series C-1 Preferred (adjusted for any subdivisions, splits, combinations, consolidations, reorganizations, recapitalizations or stock distributions or stock dividends with respect to such shares effected after the date this Restated Certificate was filed with the Secretary of State) remain outstanding, the Corporation shall not, without obtaining the prior affirmative vote or written consent of the holders of seventy percent (70%) of the Series C-1 Preferred, voting together as a single and separate class, take any action (including amending the Corporation's Certificate of Incorporation changing the powers, preferences or special rights of the shares of any other series or by way of merger, consolidation or otherwise) that would alter or change adversely the powers, preferences or special rights of the Series C-1 Preferred; provided, however, that the Corporation's authorization of additional shares of an existing class or series of equity securities, the issuance of additional shares thereof, or the authorization or issuance of any class or series of equity securities having any preference or priority as to voting, dividends or distribution of assets upon liquidation, merger or otherwise, which is superior to or on parity with any such preference or priority of the Series C-1 Preferred shall not be deemed to alter or change adversely the powers, preferences or special rights of the Series C-1 Preferred; provided, further, that any such authorization that includes any provision for conversion of shares of Preferred Stock into shares of Common Stock in the event of a holder's failure to purchase shares so authorized (a pay to play) shall be deemed to so alter or change adversely the powers, preferences or special rights of the Series C-1 Preferred.

(d) In addition to any vote required herein or by law and any other rights provided by law, so long as at least 750,000 shares of Series B-1 Preferred (adjusted for any subdivisions, splits, combinations, consolidations, reorganizations, recapitalizations or stock distributions or stock

dividends with respect to such shares effected after the date this Restated Certificate was filed with the Secretary of State) remain outstanding, the Corporation shall not, without obtaining the prior affirmative vote or written consent of the holders of a majority of the Series B-1 Preferred, take any action (including amending the Corporation's Certificate of Incorporation changing the powers, preferences or special rights of the shares of any other series or by way of merger, consolidation or otherwise) that would alter or change adversely the powers, preferences or special rights of the Series B-1 Preferred; provided, however, that the Corporation's authorization of additional shares of an existing class or series of equity securities, the issuance of additional shares thereof, or the authorization or issuance of any class or series of equity securities having any preference or priority as to voting, dividends or distribution of assets upon liquidation, merger or otherwise, which is superior to or on parity with any such preference or priority of the Series B-1 Preferred shall not be deemed to alter or change adversely the powers, preferences or special rights of the Series B-1 Preferred; provided, further, that any such authorization that includes any provision for conversion of shares of Preferred Stock into shares of Common Stock in the event of a holder's failure to purchase shares so authorized (a pay to play) shall be deemed to so alter or change adversely the powers, preferences or special rights of the Series B-1 Preferred.

(e) In addition to any vote required herein or by law and any other rights provided by law, Section 6(a) cannot be amended without obtaining the prior affirmative vote or written consent of the holders of at least two-thirds (2/3) of the Series D Preferred then outstanding, voting as a single and separate class.

(f) In addition to any vote required herein or by law and any other rights provided by law, Section 6(b) cannot be amended without obtaining the prior affirmative vote or written consent of the holders of at least seventy percent (70%) of the Series D Preferred then outstanding, voting together as a single and separate class.

(g) In addition to any vote required herein or by law and any other rights provided by law, Section 6(c) cannot be amended without obtaining the prior affirmative vote or written consent of the holders of at least seventy percent (70%) of the Series C-1 Preferred then outstanding, voting together as a single and separate class.

(h) In addition to any vote required herein or by law and any other rights provided by law, Section 6(d) cannot be amended without obtaining the prior affirmative vote or written consent of the holders of at least a majority of the Series B-1 Preferred then outstanding, voting together as a single and separate class.

(i) In addition to any vote required herein or by law and other rights provided by law, neither Section 2(a) nor Section 4(b)(ii) can be amended without obtaining the prior affirmative vote or written consent of the holders of at least seventy percent (70%) of the Series D Preferred then outstanding, voting together as a single and separate class.

**7. Status of Converted or Redeemed Stock.** In case any shares of Preferred Stock shall be converted pursuant to Section 4 hereof or redeemed pursuant to Section 5 hereof, the shares so converted or redeemed shall be cancelled and shall not be reissuable by the Corporation. From

time to time, the Certificate of Incorporation of the Corporation shall be appropriately revised to reflect the corresponding reduction in the Corporation's authorized capital stock.

8. **Residual Rights.** All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the Common Stock.

#### ARTICLE V

The Corporation shall have perpetual existence.

#### ARTICLE VI

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

#### ARTICLE VII

In furtherance and not in limitation of the powers conferred by statute, but subject to Section 6(a) of Article IV, the Board is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

#### ARTICLE VIII

(a) To the fullest extent permitted by the General Corporation Law of Delaware, as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

(b) The Corporation 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.

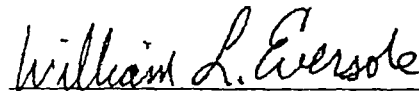
(c) Neither any amendment nor repeal of this Article VIII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VIII, shall eliminate or reduce the effect of this Article VIII, in respect of any matter occurring, or any action or proceeding 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 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.

IN WITNESS WHEREOF, Bandspeed, Inc. has caused this Amended and Restated Certificate of Incorporation to be executed by William L. Eversole, its Chief Executive Officer, this 31st day of July, 2007.

BANDSPEED, INC.

A handwritten signature in cursive script that reads "William L. Eversole". The signature is written in dark ink and is positioned above a horizontal line.

William L. Eversole, Chief Executive Officer