

**CERTIFICATE OF AMENDMENT OF THE  
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF  
APTUS ENDOSYSTEMS, INC.**

Aptus Endosystems, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"),

**DOES HEREBY CERTIFY:**

**FIRST:** The name of the Corporation is Aptus Endosystems, Inc. and that this corporation was originally incorporated pursuant to the General Corporation Law on June 27, 2002, under the name Aptus Endosystems, Inc.

**SECOND:** That the Board of Directors of the Corporation adopted a resolution setting forth a proposed amendment to the Corporation's Amended and Restated Certificate of Incorporation, declaring said amendment to be advisable and in the best interests of the Corporation and its stockholders and authorizing the appropriate officers of the Corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment is as follows:

**RESOLVED**, that Article IV, Section A of the Corporation's Amended and Restated Certificate of Incorporation be amended and restated to read in its entirety as follows:

"A. This 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 Ninety-Four Million Eight Hundred Seventy-Two Thousand Seven Hundred Thirty-Seven (94,872,737). Fifty-Five Million Shares (55,000,000) shares shall be Common Stock, each having a par value of one-tenth of one cent (\$0.001). Thirty-Nine Million Eight Hundred Seventy-Two Thousand Seven Hundred Thirty-Seven (39,872,737) shares shall be Preferred Stock, each having a par value of one-tenth of one cent (\$0.001)."

**RESOLVED**, that Article IV, Section C of the Corporation's Amended and Restated Certificate of Incorporation be amended and restated to read in its entirety as follows:

"C. One million eight hundred eighty four thousand six hundred sixteen (1,884,616) of the authorized shares of Preferred Stock shall be designated Series A1 Preferred Stock (the "Series A1 Preferred"), four million four hundred eighty-one thousand two hundred ninety-four (4,481,294) shall be designated Series A2 Preferred Stock (the "Series A2 Preferred"), eleven million five hundred six thousand eight hundred twenty-seven (11,506,827) shares shall be designated Series B Preferred Stock (the "Series B Preferred") and Twenty-Two Million

(22,000,000) shares shall be designated Series C Preferred Stock (the "Series C Preferred", and together with the Series A1 Preferred, Series A2 Preferred and Series B Preferred, the "Series Preferred")."

**THIRD:** That thereafter said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware at a meeting of the stockholders holding the requisite number of shares required by statute given in accordance with and pursuant to Section 228 of the General Corporation Law of the State of Delaware.

**IN WITNESS WHEREOF,** this Corporation has caused this Certificate of Amendment of the Amended and Restated Certificate of Incorporation to be signed by its President this 26<sup>th</sup> day of January, 2009.

/s/ Bob Katz  
Bob Katz, President