

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

**(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)**

Atrica, Inc. (the "corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "General Corporation Law"), hereby certifies as follows:

1. That the corporation was incorporated on January 20, 2000 under the name Atrica, Inc., pursuant to the General Corporation Law.
2. That the Board of Directors duly adopted resolutions proposing to amend and restate the Amended and Restated Certificate of Incorporation of this corporation, filed on February 7, 2002, as amended on December 19, 2002, March 31, 2003 and on May 22, 2003 (the "Prior Certificate"), declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:
3. This Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Prior Certificate in its entirety to read as follows:

I.

The name of the corporation is Atrica, Inc.

II.

The address of the registered office of the corporation in the State of Delaware is 15 East North Street, City of Dover 19901, County of Kent, and the name of the registered agent of the corporation in the State of Delaware at such address is Incorporating Services, Ltd.

III.

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

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 that this corporation is authorized to issue is 691,134,690 shares. The total number of shares of Common Stock that the corporation is authorized to issue is 400,000,000, with a par value of \$0.001 per share. The total number of shares of Preferred Stock that the corporation is authorized to issue is 291,134,690, with a par value of \$0.001 per share, 4,755,788 shares of which are designated "**Series A Preferred Stock**", 9,866,390 of which are designated "**Series B Preferred Stock**", 5,739,629 shares of which are designated as "**Series C Preferred Stock**", 38,132,528 shares of which are designated "**Series D Preferred Stock**", 12,437,811 shares of which are designated "**Series D-1 Preferred Stock**", 4,755,788 shares of which are designated "**Series A-1 Preferred Stock**", 9,866,390 of which are designated "**Series B-1 Preferred Stock**", 5,739,629 shares of which are designated as "**Series C-1 Preferred Stock**", 38,132,528 shares of which are designated "**Series D-2 Preferred Stock**", 9,593,819 shares of which are designated "**Series D-3 Preferred Stock**" and 152,114,390 shares of which are designated "**Series E Preferred Stock**."

The corporation shall from time to time in accordance with the laws of the State of Delaware increase the authorized amount of its Common Stock if at any time the number of shares of Common Stock remaining unissued and available for issuance upon conversion of the Preferred Stock shall not be sufficient to permit conversion of the Preferred Stock. The number of shares of authorized Common Stock may be increased or decreased (but not below the number of shares then outstanding) pursuant to an affirmative vote of the holders of at least a majority of the then outstanding capital stock of the corporation (determined on an as-converted basis).

The relative rights, preferences, privileges and restrictions granted to or imposed upon the respective classes and series of the shares of capital stock or the holders thereof are as set forth below in this Article IV.

Section 1. Dividends. Prior and in preference to any dividends payable to holders of Common Stock and any other series of Preferred Stock, the holders of Series E Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of funds legally available therefor, noncumulative dividends in an amount equal to \$0.0184 per outstanding share of Series E Preferred Stock (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like occurring after the date of filing of this Amended and Restated Certificate of Incorporation) per annum. After full payment to the holders of the Series E Preferred Stock of the dividend to which such holders are entitled pursuant to this Section 1(a), the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock and Series D-3 Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any funds legally available therefor, noncumulative dividends in an amount equal to \$0.0651 per outstanding share of Series A Preferred Stock and Series A-1 Preferred Stock, \$0.1252 per outstanding share of Series B Preferred Stock and Series B-1 Preferred Stock, \$0.3208 per outstanding share of Series C Preferred Stock and Series C-

1 Preferred Stock, and \$0.1608 per outstanding share of Series D Preferred Stock, Series D-1 Preferred Stock, Series D-2 Preferred Stock and Series D-3 Preferred Stock (in each case, as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like occurring after the date of filing of this Amended and Restated Certificate of Incorporation) per annum. No dividend shall be paid on the Common Stock in any year, other than dividends payable solely in Common Stock, until all dividends for such year have been declared and paid on the Preferred Stock, and no dividends on the Common Stock shall be paid unless the amount of such dividend on the Common Stock is also paid on the Preferred Stock on an as-converted to Common Stock basis.

Section 2. Liquidation Preference.

(a) Upon a liquidation, dissolution or winding up of the corporation, prior and in preference to any distribution, if any, of the assets or funds of the corporation to the holders of Common Stock and any other Series of Preferred Stock, by reason of their ownership of such stock, the holders of Series E Preferred Stock shall be entitled to receive for each outstanding share of Series E Preferred Stock then held by them an amount equal to \$0.3451 plus declared but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any recapitalizations, stock combinations, stock dividends, stock splits and the like occurring after the date of filing of this Amended and Restated Certificate of Incorporation). If, upon the occurrence of a liquidation, dissolution or winding up, the assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be insufficient to permit the payment to such holders of Series E Preferred Stock of the full aforementioned preferential amount, then the entire assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be distributed ratably among the holders of Series E Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) Upon a liquidation, dissolution or winding up of the corporation, after payment to the holders of Series E Preferred Stock of the amounts to which they are entitled pursuant to Section 2(a) and, prior and in preference to any distribution, if any, of the assets or funds of the corporation to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock and Series D-2 Preferred Stock and Common Stock, by reason of their ownership of such stock, the holders of Series D-3 Preferred Stock shall be entitled to receive for each outstanding share of Series D-3 Preferred Stock then held by them an amount equal to \$0.9136 plus declared but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any recapitalizations, stock combinations, stock dividends, stock splits and the like occurring after the date of filing of this Amended and Restated Certificate of Incorporation). If, upon the occurrence of a liquidation, dissolution or winding up, the assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be insufficient to permit the payment to such holders of Series D-3 Preferred Stock of the full aforementioned preferential amounts, then the entire remaining assets and funds of the corporation legally available for distribution to stockholders by reason of

their ownership of stock of the corporation shall be distributed ratably among the holders of Series D-3 Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(c) Upon a liquidation, dissolution or winding up of the corporation, after payment to the holders of Series E Preferred Stock and Series D-3 Preferred Stock of the amounts to which they are entitled pursuant to Section 2(a) and 2(b) and, prior and in preference to any distribution, if any, of the assets or funds of the corporation to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock and Common Stock, by reason of their ownership of such stock, the holders of Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock and Series D-3 Preferred Stock shall be entitled to receive for each outstanding share of such series of Preferred Stock then held by them an amount equal to (i) in the case of the Series A-1 Preferred Stock, \$0.3698 plus declared but unpaid dividends on such share, (ii) in the case of the Series B-1 Preferred Stock, \$0.7114 plus declared but unpaid dividends on such share, (iii) in the case of the Series C-1 Preferred Stock, \$1.8227 plus declared but unpaid dividends on such share, (iv) in the case of the Series D-2 Preferred Stock, \$1.8273 plus declared but unpaid dividends on such share, and (v) in the case of the Series D-3 Preferred Stock, \$0.9136 plus declared but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any recapitalizations, stock combinations, stock dividends, stock splits and the like occurring after the date of filing of this Amended and Restated Certificate of Incorporation). If, upon the occurrence of a liquidation, dissolution or winding up, the assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be insufficient to permit the payment to such holders of Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock and Series D-3 Preferred Stock of the full aforementioned preferential amounts, then the entire remaining assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be distributed ratably among the holders of Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock and Series D-3 Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(d) Upon a liquidation, dissolution or winding up of the corporation, after payment to the holders of Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock of the amounts to which they are entitled pursuant to Sections 2(a), 2(b) and 2(c) and, prior and in preference to any distribution, if any, of the assets or funds of the corporation to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Common Stock, by reason of their ownership of such stock, the holders of Series D-1 Preferred Stock shall be entitled to receive for each outstanding share of Series D-1 Preferred Stock then held by them an amount equal to \$2.01 plus declared but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any recapitalizations, stock combinations, stock dividends, stock splits and the like occurring after the date of filing of this Amended and Restated Certificate of Incorporation). If, upon the occurrence of a liquidation, dissolution or

winding up, the assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be insufficient to permit the payment to such holders of Series D-1 Preferred Stock of the full aforementioned preferential amount, then the entire remaining assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be distributed ratably among the holders of Series D-1 Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(e) Upon a liquidation, dissolution or winding up of the corporation, after payment to the holders of Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock of the amounts to which they are entitled pursuant to Sections 2(a), 2(b), 2(c) and 2(d) and, prior and in preference to any distribution, if any, of the assets or funds of the corporation to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Common Stock, by reason of their ownership of such stock, the holders of Series D Preferred Stock and Series D-1 Preferred Stock shall be entitled to receive for each outstanding share of Series D Preferred Stock and Series D-1 Preferred Stock then held by them an amount equal to \$2.01 plus declared but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any recapitalizations, stock combinations, stock dividends, stock splits and the like occurring after the date of filing of this Amended and Restated Certificate of Incorporation). If, upon the occurrence of a liquidation, dissolution or winding up, the assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be insufficient to permit the payment to such holders of Series D Preferred Stock and Series D-1 Preferred Stock of the full aforementioned preferential amount, then the entire remaining assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be distributed ratably among the holders of Series D Preferred Stock and Series D-1 Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(f) Upon a liquidation, dissolution or winding up of the corporation, after payment to the holders of Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock of the amounts to which they are entitled pursuant to Sections 2(a), 2(b), 2(c), 2(d) and 2(e) and, prior and in preference to any distribution, if any, of the assets or funds of the corporation to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Common Stock, by reason of their ownership of such stock, the holders of Series D Preferred Stock shall be entitled to receive for each outstanding share of Series D Preferred Stock then held by them an amount equal to \$2.01 plus declared but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any recapitalizations, stock combinations, stock dividends, stock splits and the like occurring after the date of filing of this Amended and Restated Certificate of Incorporation). If, upon the occurrence of a liquidation, dissolution or winding up, the assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be insufficient to permit the payment to such holders of Series D Preferred Stock of the full aforementioned preferential amount, then the

entire remaining assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be distributed ratably among the holders of Series D Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(g) Upon a liquidation, dissolution or winding up of the corporation, after payment to the holders of Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock of the amounts to which they are entitled pursuant to Sections 2(a), 2(b), 2(c), 2(d), 2(e) and 2(f) and, prior and in preference to any distribution, if any, of any of the assets or funds of the corporation to the holders of the Common Stock by reason of their ownership of such stock, the holders of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be entitled to receive for each outstanding share of Preferred Stock then held by them an amount equal to (i) in the case of the Series A Preferred Stock, \$0.8136 plus declared but unpaid dividends on such share, (ii) in the case of the Series B Preferred Stock, \$1.565 plus declared but unpaid dividends on such share, and (iii) in the case of the Series C Preferred Stock, \$4.01 plus declared but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any recapitalizations, stock combinations, stock dividends, stock splits and the like occurring after the date of filing of this Amended and Restated Certificate of Incorporation). If, upon the occurrence of a liquidation, dissolution or winding up, the assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be insufficient to permit the payment to such holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock of the full aforementioned preferential amounts, then the entire remaining assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be distributed ratably among the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(h) Upon a liquidation, dissolution or winding up of the corporation, and after payment to the holders of Preferred Stock of the amounts to which they are entitled pursuant to Sections 2(a), 2(b), 2(c), 2(d), 2(e), 2(f) and 2(g), all assets and funds of the corporation that remain legally available for distribution to stockholders, if any, by reason of their ownership of stock of the corporation shall be distributed ratably among the holders of Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series E Preferred Stock and Common Stock in proportion to the number of shares of Common Stock held by them; provided, however, that the aggregate distributions made pursuant to one or more subsections of this Section 2 with respect to any share of Preferred Stock shall not exceed an amount equal to \$0.8136 plus any declared but unpaid dividends in the case of the Series A-1 Preferred Stock, \$1.565 plus any declared but unpaid dividends in the case of the Series B-1 Preferred Stock, \$4.01 plus any declared but unpaid dividends in the case of the Series C-1 Preferred Stock, \$4.02 plus any declared but unpaid dividends in the case of each of the Series D-2 Preferred Stock and Series D-3 Preferred Stock, and \$0.46 plus any declared but unpaid dividends in the case of the Series E Preferred Stock.

(i) For the purposes of this Section 2, a liquidation, dissolution or winding up of the corporation shall be deemed to be occasioned by, and to include, the corporation's sale or exclusive licensing (including a sale or exclusive licensing through a subsidiary) of all or substantially all of its assets in a single transaction or series of related transactions or the acquisition of this corporation by another entity by means of merger or consolidation resulting in the exchange of the outstanding shares of this corporation for securities or consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary, that results in the transfer of more than 50% of the outstanding voting power of this corporation or any other transaction or series of related transactions involving the transfer of more than 50% of the outstanding voting power of this corporation.

(j) If any of the assets of this corporation are to be distributed under this Section 2, or for any other purpose, in a form other than cash, then the board of directors of the corporation shall be empowered to, and shall promptly determine in good faith the value of the assets to be distributed to the holders of Preferred Stock or Common Stock. This corporation shall, upon receipt of such determination, give prompt written notice of the determination to each holder of shares of Preferred Stock or Common Stock.

(k) In the event that the requirements of this Section 2 are not complied with, this corporation shall forthwith either:

(i) cause such closing to be postponed until such time as the requirements of this Section 2 have been complied with; or

(ii) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection 2(i) hereof.

(l) This corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and this corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than the later of (i) twenty (20) days after this corporation has given the first notice provided for herein, and (ii) ten (10) days after this corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least 66% of the voting power of all then outstanding shares of such Preferred Stock (voting together as a single class and not as separate series and on an as-converted to Common Stock basis).

(m) Any holder of the Preferred Stock may, at its option, convert all or a portion of its shares into Common Stock at any time prior to the closing of a liquidation, dissolution or winding up of the Corporation and thereby receive distributions with the holders of the Common Stock in lieu of receiving distributions with the holders of the Preferred Stock

(n) Notwithstanding the foregoing, payments may be made pursuant to the corporation's Change of Control Incentive Plan, as may be amended from time to time, and such payments shall not be considered "distributions" in connection with a liquidation, dissolution or winding up of the corporation for purposes of this Section 2.

Section 3. Conversion. The holders of Preferred Stock shall have conversion rights as follows:

(a) **Right to Convert.** Each share of Preferred Stock 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 such Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price (the "**Original Issue Price**") of such share of Preferred Stock by the Conversion Price (the "**Conversion Price**") at the time in effect for a share of such series of Preferred Stock. The Original Issue Price per share of Series A Preferred Stock and Series A-1 Preferred Stock is \$0.8136. The Original Issue Price per share of Series B Preferred Stock and Series B-1 Preferred Stock is \$1.565. The Original Issue Price per share of Series C Preferred Stock and Series C-1 Preferred Stock is \$4.01. The Original Issue Price per share of Series D Preferred Stock, Series D-1 Preferred Stock, Series D-2 Preferred Stock and Series D-3 Preferred Stock is \$2.01. The Original Issue Price per share of the Series E Preferred Stock is \$0.23009. The initial Conversion Price per share of Series A Preferred Stock, Series B Preferred Stock, Series A-1 Preferred Stock and Series B-1 Preferred Stock shall be the Original Issue Price for such series, subject to adjustment from time to time as provided below. The initial Conversion Price per share of the Series C Preferred Stock and Series C-1 Preferred Stock shall be \$3.037, subject to adjustment from time to time as provided below. The initial Conversion Price per share of the Series D Preferred Stock, Series D-1 Preferred Stock, Series D-2 Preferred Stock and Series D-3 Preferred Stock shall be \$1.98, subject to adjustment from time to time as provided below. The initial Conversion Price per share of the Series E Preferred Stock shall be \$0.23009, subject to adjustment from time to time as provided below.

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price upon the earliest to occur 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 yielded to the corporation gross proceeds of no less than \$50,000,000 in the aggregate (a "**Qualified Initial Public Offering**").

(ii) in the case of the Series E Preferred Stock only, the consent of holders of more than 50% of the then outstanding shares of Series E Preferred Stock.

(iii) in the case of the Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock and Series D-3 Preferred Stock only, the consent of holders of more than 50% of the then outstanding shares of Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock and Series D-3 Preferred Stock (voting together as a single class and not as separate series and on an as-converted to Common Stock basis).

(iv) in the case of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series D-1 Preferred Stock only, the consent of holders of more than 50% of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series D-1 Preferred (voting together as a single class and not as separate series and on an as-converted to Common Stock basis). Notwithstanding the foregoing, (x) the Series C Preferred Stock shall not be converted automatically into shares of Common Stock pursuant to Section 3(b)(iv) in connection with this corporation's initial public offering if the per share price in such offering is less than \$8.02 (as adjusted for any stock splits, stock dividends, recapitalizations, or the like occurring after the date of filing of this Amended and Restated Certificate of Incorporation) without first obtaining the approval of the holders of not less than a majority of the then outstanding shares of Series C Preferred Stock (voting together as a separate class, and on an as-converted to Common Stock basis); (y) the Series D Preferred Stock shall not be converted into shares of Common Stock pursuant to Section 3(b)(iv) without first obtaining the approval of the holders of at least 67% of the then outstanding shares of Series D Preferred Stock (voting together as a separate class, and on an as-converted to Common Stock basis) and (z) the Series D-1 Preferred Stock shall not be converted into shares of Common Stock pursuant to Section 3(b)(iv) without first obtaining the approval of the holders of at least 75% of the then outstanding shares of Series D-1 Preferred Stock (voting together as a separate class, and on an as-converted to Common Stock basis).

(v) in the case of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series D-1 Preferred Stock only, on April 30, 2004 (the "Old Preferred Conversion Date").

(c) **Mechanics of Conversion.** No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled (after aggregating all shares of Preferred Stock held by such holder to be converted, 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 Conversion Price of such series of Preferred Stock. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock pursuant to Section 3(a), such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the corporation or of any transfer agent for such Preferred Stock, and shall give written notice by facsimile or by mail, postage prepaid, to the corporation at its principal corporate office, of the election to convert the same, and 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 Preferred Stock to be converted. In the event of an automatic conversion pursuant to Section 3(b), the outstanding shares

of Preferred Stock shall be converted automatically without any further action by the holder of such shares and whether or not the certificates representing such shares are surrendered to the corporation or the transfer agent for such Preferred Stock; and 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 Preferred Stock are either delivered to the corporation or the transfer agent for such Preferred Stock as provided above, or the holder notifies the corporation or the transfer agent for such Preferred Stock 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 thereafter, issue and deliver to such address as the holder may direct, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion shall be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, and the conversion shall not be deemed to have occurred until immediately prior to the closing of such sale of securities.

(d) **Adjustment of Conversion Price of Preferred Stock.** The Conversion Price of the Series A Preferred Stock, the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, the Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) (1) If, on or after the Purchase Date (as defined below) but prior to the Old Preferred Conversion Date, this corporation issues any Additional Stock (as defined below) without consideration or for a consideration per share less than the applicable Conversion Price for the Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock or Series E Preferred Stock in effect immediately prior to the issuance of such Additional Stock, then, and in such event, the Conversion Price for the Series C Preferred Stock, the Series D Preferred Stock, the Series D-1 Preferred Stock, the Series C-1 Preferred Stock, the Series D-2 Preferred Stock, the Series D-3 Preferred Stock and the Series E Preferred Stock, as applicable, in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause 3(d)(i)) be adjusted to a price determined by multiplying the Conversion Price of the Series C Preferred Stock, the Series D Preferred Stock, Series D-1 Preferred Stock, the Series C-1 Preferred Stock, the Series D-2 Preferred Stock, the Series D-3 Preferred Stock and the Series E Preferred Stock, as the case may be, by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 3(d)(i)(E)(1) or 3(d)(i)(E)(2)) plus the number of shares of Additional Stock that the aggregate consideration received by this corporation for such issuance 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 issuance (including shares of Common Stock deemed to be issued pursuant to subsection 3(d)(i)(E)(1) or 3(d)(i)(E)(2)) plus the number of shares of such Additional Stock so issued. The "Purchase Date" means, with respect to the Series C Preferred Stock, the date upon which the corporation first issued any shares of Series D-1 Preferred Stock,

with respect to the Series D Preferred Stock, the date upon which the corporation first issued any shares of Series D Preferred Stock, with respect to the Series D-1 Preferred Stock, the date upon which the corporation first issued shares of Series D-1 Preferred Stock with respect to the Series C-1 Preferred Stock, the date upon which the corporation first issued any shares of Series C-1 Preferred Stock, with respect to the Series D-2 Preferred Stock, the date upon which the corporation first issued any shares of Series D-2 Preferred Stock, with respect to the Series D-3 Preferred Stock, the date upon which the corporation first issued any shares of Series D-3 Preferred Stock, and with respect to the Series E Preferred Stock, the date upon which the corporation first issued shares of Series E Preferred Stock.

(2) If, on or after the Old Preferred Conversion Date, this corporation issues any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for the Series E Preferred Stock in effect immediately prior to the issuance of such Additional Stock, then, and in such event, the Conversion Price for the Series C-1 Preferred Stock, the Series D-2 Preferred Stock, Series D-3 Preferred Stock and the Series E Preferred Stock, as applicable, in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause 3(d)(i)) be adjusted to a price determined by multiplying the Conversion Price of the Series C-1 Preferred Stock, the Series D-2 Preferred Stock, the Series D-3 Preferred Stock and the Series E Preferred Stock, as the case may be, by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 3(d)(i)(E)(1) or 3(d)(i)(E)(2)) plus the number of shares of Additional Stock that the aggregate consideration received by this corporation for such issuance would purchase at the Conversion Price then in effect for the Series E Preferred Stock; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 3(d)(i)(E)(1) or 3(d)(i)(E)(2)) plus the number of shares of such Additional Stock so issued.

(B) No adjustment of the Conversion Price for the Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock or Series E Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections 3(d)(i)(E)(3) and 3(d)(i)(E)(4), no adjustment of such Conversion Price pursuant to this subsection 3(d)(i) shall have the effect of increasing the Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock or Series E Preferred Stock Conversion Price, as the case may be, above the applicable Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Additional Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any discounts,

commissions or other expenses allowed, paid or incurred by this corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of the Additional Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors irrespective of any accounting treatment, provided that the holders of a majority in interest of the Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock then outstanding, voting together on an as-converted to Common Stock basis, may challenge such determination by the Board of Directors, in which case the fair value shall be determined by an independent reputable appraiser appointed by the mutual agreement of the Board of Directors and holders of a majority in interest of the Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock.

(E) In the case of the issuance (whether before, on or after the Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 3(d)(i) and subsection 3(d)(ii) (collectively, "**Convertible Securities**"):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 3(d)(i)(C) and 3(d)(i)(D)), if any, received by this corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by this corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by this corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of

such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 3(d)(i)(C) and 3(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof (unless such options or rights or convertible or exchangeable securities were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 3(d)(i)(A)), the Conversion Price of the Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock, as applicable, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock, as applicable, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities (unless such options or rights were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 3(d)(i)(A)), shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

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

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or Convertible Securities as defined in subsection 3(d)(i)(E)) by this corporation after the Purchase Date other than

(A) Common Stock issued pursuant to a transaction described in subsection 3(d)(iii) hereof;

(B) shares of Common Stock, Preferred Stock, warrants or other securities issuable or issued to employees, consultants or directors (if in transactions with primarily

non-financing purposes) of this corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of this corporation;

(C) shares of Common Stock, Preferred Stock, warrants or other securities issued to (1) equipment lessors, (2) a bank or similar financial institution from which a credit line or bank loan is provided to the corporation, (3) entities that are determined by the Board of Directors (including the affirmative vote of at least a majority of the directors appointed by the holders of Preferred Stock) to be strategic partners and (4) real estate lessors; provided that in each case such issuances are primarily for purposes other than equity financing and are approved by the Board of Directors (including the affirmative vote of at least a majority of the directors appointed by the holders of Preferred Stock);

(D) Common Stock issued upon conversion of shares of Preferred Stock;

(E) Common Stock or Preferred Stock issued in connection with a bona fide business acquisition by the corporation approved by the Board of Directors, whether by merger, consolidation, sale of assets, sale or exchange of stock, exclusive licensing or otherwise;

(F) as a dividend or distribution on the Preferred Stock or any event for which adjustment is made pursuant to Section 3(e) or 3(f);

(G) up to an aggregate of 3,721,751 shares of Common Stock issuable upon conversion of warrants to purchase Common Stock issued or issuable by the Company to investors in connection with the Company's Series D-1 Preferred Stock financing;

(H) shares of Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock or Series D-3 Preferred Stock (collectively, the "New Preferred") issued in exchange for shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series D-1 Preferred Stock;

(I) warrants for the New Preferred (collectively, the "New Preferred Warrants") issued in exchange for warrants for Existing Preferred (collectively, the "Existing Preferred Warrants"), provided that such Existing Preferred Warrants were outstanding as of the date hereof;

(J) shares of New Preferred issued upon the exercise or conversion of the New Preferred Warrants; or

(K) securities issued upon the exercise or conversions of Convertible Securities outstanding on the date hereof.

(iii) In the event this corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the

outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "**Common Stock Equivalents**") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(iv) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) **Other Distributions.** In the event this corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 3(d)(iii), then, in each such case for the purpose of this subsection 3(c), the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this corporation into which their shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of this corporation entitled to receive such distribution.

(f) **Recapitalizations.** If at any time or from time to time there shall be a recapitalization or reclassification of the Common Stock or a similar event (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 3 or in Section 2), provision shall be made so that the holders of the Series A Preferred Stock, Series B

Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock shall thereafter be entitled to receive upon conversion of such shares of Preferred Stock the number of shares of stock or other securities or property of the corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 3 with respect to the rights of the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock after the recapitalization to the end that the provisions of this Section 3 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) **No Impairment.** This corporation will not, through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 3 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 Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock against impairment. Notwithstanding the foregoing, nothing in this Section 3(g) shall prohibit the corporation from amending its Certificate of Incorporation with the requisite consent of its stockholders and the board of directors

(h) **Certificate as to Adjustments** Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock or Series E Preferred Stock pursuant to this Section 3, this corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This corporation shall, upon each adjustment or readjustment, furnish or cause to be furnished to each holder of Preferred Stock a like certificate setting forth (A) such adjustment and readjustment,

(B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock.

(i) **Notices of Record Date.** In the event of any taking by this corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this corporation shall mail to each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) **Reservation of Stock Issuable Upon Conversion.** This 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 A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, this corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this certificate.

(k) **Notices.** Any notice required by the provisions of this Section 3 to be given to the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock

and Series E Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of this corporation.

(l) Waiver of Adjustment of Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of the majority of the outstanding shares of such series, in the case of the Series A Preferred Stock, Series B Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock, and by the holders of two-thirds of the outstanding shares of such series in the case of the Series C Preferred Stock, Series D Preferred Stock or Series D-1 Preferred Stock; provided that any such waiver that treats any one or more holders of a particular class or series, as applicable, in a materially adverse manner that is different than any other holder of that same class or series, as applicable, shall require the approval of such holder. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

Section 4. Voting.

(a) General. Except as otherwise required by law, each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock so held could be converted at the record date for determination of the stockholders entitled to vote, or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited. Except as required by law or as otherwise set forth herein (including without limitation Section 4(b)), all shares of Preferred Stock and all shares of Common Stock shall vote together as a single class. 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 down to the nearest whole number.

(b) Election of Directors.

(i) Authorized Number of Directors. The authorized number of directors of the corporation shall be set forth in the Bylaws of the corporation and may be increased by a duly authorized resolution of the Board of Directors of the corporation (the "Board of Directors") in accordance with the Bylaws, but may only be decreased with the vote of a majority such class or series that is entitled to elect the director whose seat is to be eliminated in connection with such reduction.

(ii) Structure of Board of Directors. The structure of the Board of Directors shall be as follows:

(A) Effective upon the date of filing of this Amended and Restated Certificate of Incorporation, and subject to paragraphs (b), (c), (d) and (e) below, the directors shall be elected to the Board of Directors as follows: (i) the holder(s) of a majority of the Series E

Preferred Stock, voting as a separate series, shall be entitled to elect two (2) directors at each annual meeting of stockholders or pursuant to written consent of the corporation's stockholders (the "Series E Directors"); (ii) the holder(s) of a majority of the New Preferred, voting together as a class on an as-converted to Common Stock basis, shall be entitled to elect three (3) directors at each annual meeting of stockholders or pursuant to written consent of the corporation's stockholders (the "New Preferred Directors"); and (iii) the holders of a majority of both the Common Stock and the Preferred Stock, voting together as a single class, and, with respect to the Preferred Stock, on an as-converted to Common Stock basis, shall be entitled to elect all remaining directors at each annual meeting of stockholders or pursuant to written consent of the corporation's stockholders (the "Mutual Directors").

(B) Effective as of the First Reduction Time, as defined in that certain Sixth Amended and Restated Investor Rights Agreement of the Company (the "Investor Rights Agreement"), the number of New Preferred Directors shall be reduced to two (2) directors.

(C) Effective as of the Second Reduction Time, as defined in the Investor Rights Agreement, the number of New Preferred Directors shall be reduced to one (1) director.

(D) If at any time less than 50% of the shares of Series E Preferred Stock originally issued remain outstanding, the Series E Directors shall thereafter become Mutual Directors and there shall be no further right of the Series E Preferred Stock, voting as a separate series, to elect directors of the corporation.

(E) If at any time less than 50% of the shares of New Preferred originally issued remain outstanding, the New Preferred Directors shall thereafter become Mutual Directors and there shall be no further right of the New Preferred Stock, voting together as a single class, to elect directors of the corporation.

(iii) Removal; Filling of Vacancies. The Series E Directors may be removed from the Board of Directors only by the affirmative vote of the holders of a majority of the Series E Preferred Stock voting as a separate series. The New Preferred Directors may be removed from the Board of Directors only by the affirmative vote of the holders of a majority of the New Preferred, voting together as a class on an as-converted to Common Stock basis. The remaining directors may be removed from the Board of Directors only by the affirmative vote of the holders of a majority of both the Common Stock and the Preferred Stock, voting together as a single class, and, with respect to the Preferred Stock, on an as-converted to Common Stock basis. If a vacancy on the Board of Directors is to be filled by the Board of Directors, only a director or directors elected by the same class or classes of stockholders as those who would be entitled to vote to fill such vacancy, if any, may vote to fill such vacancy.

(iv) Quorum. At any meeting held for the purpose of electing directors that is duly convened pursuant to the corporation's Amended and Restated Certificate, its Bylaws and Sections 211, 222 and 228 of the General Corporation Law, (i) the presence in person or by proxy of the holders of a majority of the aggregate number of shares of Series E Preferred Stock then

outstanding on an as-if-converted to Common Stock basis shall constitute a quorum of the Series E Preferred Stock for the election of directors to be elected solely by the holders of the Series E Preferred Stock; (ii) the presence in person or by proxy of the holders of a majority of the aggregate number of shares of New Preferred then outstanding on an as-if-converted to Common Stock basis shall constitute a quorum of the New Preferred for the election of directors to be elected solely by the holders of the New Preferred; and (iii) the presence in person or by proxy of the holders of a majority of the aggregate number of shares of the Common Stock and the Preferred Stock then outstanding on an as-if-converted to Common Stock basis, shall constitute a quorum of such stock for the election of directors to be elected jointly by the holders of the Common Stock and the Preferred Stock.

(c) Approval by Preferred Stock

(i) Except to the extent otherwise provided by the General Corporation Law, so long as at least 20% of the shares of the New Preferred (including shares issued or issuable pursuant to New Preferred Warrants) and Series E Preferred Stock issued pursuant to the Series E Preferred Stock Purchase and Preferred Stock Exchange Agreement remains outstanding, the corporation shall not, without first obtaining the approval of the holders of not less than a majority of the then outstanding total number of shares of Preferred Stock voting together as a single class, and not as separate series, on an as-converted to Common Stock basis:

(A) authorize, create or issue any shares of any class or series of stock having any preference or priority superior to or on parity with any such preference or priority of any outstanding series of Preferred Stock;

(B) take any action resulting in the repurchase or redemption of shares of Common Stock of the corporation (other than the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the corporation or any subsidiary pursuant to agreements under which the corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal);

(C) pay any dividends on its capital stock other than a dividend payable to the stockholders following a sale or exclusive license (including a sale or exclusive license through a subsidiary) of all or substantially all of the assets of the corporation;

(D) enter into any transaction or series of related transactions to sell, lease, convey, exchange, transfer, exclusively license or otherwise dispose of all or substantially all of the assets of this corporation and its subsidiaries or merge or consolidate with any other corporation in a transaction in which the result is the transfer of more than 50% of the outstanding voting power of this corporation;;

(E) recapitalize, liquidate, dissolve or wind up the corporation;

(F) increase the number of shares in the option pool (other than pursuant to a stock split, stock dividend or the like); or

(G) increase the maximum aggregate payments allowable under the corporation's Change of Control Incentive Plan (or similar successor plan) to an amount greater than 10% of the Net Proceeds (as that term is defined in the corporation's Change of Control Incentive Plan existing as of the date hereof).

(ii) This corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of the Series A-1 Preferred Stock, (a) amend this Amended and Restated Certificate of Incorporation (by merger or otherwise) to, or take any other action that would, alter or change the rights, preferences or privileges of the shares of such Series A-1 Preferred Stock, if such Series A-1 Preferred Stock would be adversely affected by such amendment, or (b) increase or decrease the authorized number of shares of Series A-1 Preferred Stock.

(iii) This corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of the Series B-1 Preferred Stock, (a) amend this Amended and Restated Certificate of Incorporation (by merger or otherwise) to, or take any other action that would, alter or change the rights, preferences or privileges of the shares of such Series B-1 Preferred Stock, if such Series B-1 Preferred Stock would be adversely affected by such amendment, or (b) increase or decrease the authorized number of shares of Series B-1 Preferred Stock.

(iv) This corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of the Series C-1 Preferred Stock, (a) amend this Amended and Restated Certificate of Incorporation (by merger or otherwise) to, or take any other action that would, alter or change the rights, preferences or privileges of the shares of such Series C-1 Preferred Stock, if such Series C-1 Preferred Stock would be adversely affected by such amendment, or (b) increase or decrease the authorized number of shares of Series C-1 Preferred Stock.

(v) This corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of the Series D-2 Preferred Stock, (a) amend this Amended and Restated Certificate of Incorporation (by merger or otherwise) to, or take any other action that would, alter or change the rights, preferences or privileges of the shares of such Series D-2 Preferred Stock, if such Series D-2 Preferred Stock would be adversely affected by such amendment, or (b) increase or decrease the authorized number of shares of Series D-2 Preferred Stock.

(vi) This corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of the Series D-3 Preferred Stock, (a) amend this Amended and Restated Certificate of Incorporation (by merger or otherwise) to, or take any other action that would, alter or change the rights, preferences or privileges of the shares of such Series D-3 Preferred Stock, if such

Series D-3 Preferred Stock would be adversely affected by such amendment, or (b) increase or decrease the authorized number of shares of Series D-3 Preferred Stock. In addition, this corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least 75% of the then outstanding shares of the Series D-3 Preferred Stock, amend Section 3 of this Amended and Restated Certificate of Incorporation to (i) alter in a manner detrimental to the holders of the Series D-3 Preferred Stock the relative order of payment of preferences of the Series D-3 Preferred Stock contained in Section 3(b) and 3(c) hereof relative to the preferences of the Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock and Series D-2 Preferred Stock contained in Section 3(c) hereof; or (ii) reduce the amount of the preferences of the Series D-3 Preferred Stock contained in Section 3(b) and 3(c) hereof without an equivalent or greater reduction (on a percentage basis) in the preferences of the Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock and Series D-2 Preferred Stock contained in Section 3(c) hereof and the preference of the Series E Preferred Stock contained in Section 3(a) (if and to the extent any shares of such series remain outstanding). For avoidance of doubt, the foregoing provisions shall not affect in any manner the designation of additional preferences for newly issued shares that are senior to those set forth in Section 3(a), 3(b) or 3(c) hereof.

(vii) This corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of the Series E Preferred Stock, (a) amend this Amended and Restated Certificate of Incorporation (by merger or otherwise) to, or take any other action that would, alter or change the rights, preferences or privileges of the shares of such Series E Preferred Stock, if such Series E Preferred Stock would be adversely affected by such amendment, or (b) increase or decrease the authorized number of shares of Series E Preferred Stock.

(viii) This corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of the Series A Preferred Stock, amend this Amended and Restated Certificate of Incorporation to, or take any other action that would, alter or change the rights, preferences or privileges of the shares of such Series A Preferred Stock, if such Series A Preferred Stock would be adversely affected by such amendment, or (b) increase or decrease the authorized number of shares of Series A-1 Preferred Stock.

(ix) This corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of the Series B Preferred Stock, amend this Amended and Restated Certificate of Incorporation to, or take any other action that would, alter or change the rights, preferences or privileges of the shares of such Series B Preferred Stock, if such Series B Preferred Stock would be adversely affected by such amendment.

(x) This corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of the Series C Preferred Stock, amend this Amended and Restated Certificate of

Incorporation to, or take any other action that would, alter or change the rights, preferences or privileges of the shares of such Series C Preferred Stock, if such Series C Preferred Stock would be adversely affected by such amendment.

(xi) Except to the extent otherwise provided by the General Corporation Law, so long as at least 20% of the shares of Series C Preferred Stock, Series D Preferred Stock and Series D-1 Preferred Stock originally issued remain outstanding, this corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least 67% of the then outstanding shares of the Series C Preferred Stock, Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class, and not as a separate series, on an as-converted to Common Stock basis:

(A) enter into any transaction or series of related transactions to sell, lease, convey, exchange, transfer or otherwise dispose of all or substantially all of the assets of this corporation or merge or consolidate with any other corporation in a transaction which results in the transfer of more than 50% of the outstanding voting power of this corporation and where the per share consideration received by any of the holders of Series C Preferred Stock, Series D Preferred Stock or Series D-1 Preferred Stock in accordance with this Amended and Restated Certificate of Incorporation is less than \$8.02 (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like occurring after the date of filing of this Amended and Restated Certificate of Incorporation); or

(B) effect an initial public offering of the corporation's Common Stock if the price per share in such offering is less than \$8.02 (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like occurring after the date of filing of this Amended and Restated Certificate of Incorporation).

(xii) Except to the extent otherwise provided by the General Corporation Law, so long as at least 20% of the shares of Series D Preferred Stock originally issued remain outstanding, this corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of at least 67% of the then outstanding shares of the Series D Preferred Stock;

(A) alter or change the rights, preferences or privileges of the shares of such Series D Preferred Stock, if such Series D Preferred Stock would be adversely affected by such amendment;

(B) increase or decrease the number of authorized shares of Series D Preferred Stock; or

(C) authorize, create or issue any shares of any class or series of stock having any preference or priority superior to or on parity with any such preference or priority of the Series D Preferred Stock.

(xiii) Except to the extent otherwise provided by the General Corporation Law, so long as at least 20% of the shares of Series D-1 Preferred Stock originally issued remain outstanding, this corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of at least 75% of the then outstanding shares of the Series D-1 Preferred Stock;

(A) alter or change the rights, preferences or privileges of the shares of such Series D-1 Preferred Stock, if such Series D-1 Preferred Stock would be adversely affected by such amendment;

(B) increase or decrease the number of authorized shares of Series D-1 Preferred Stock; or

(C) authorize, create or issue any shares of any class or series of stock having any preference or priority superior to or on parity with any such preference or priority of the Series D-1 Preferred Stock.

Section 5. Waiver of Rights, Preferences or Privileges. Unless otherwise provided herein, any right, preference or privilege of a Series of Preferred Stock may be waived by a majority of the outstanding shares of such series of Preferred Stock, in the case of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-2 Preferred Stock, Series D-3 Preferred Stock and Series E Preferred Stock, by the holders of 2/3 of the outstanding Series D Preferred Stock, in the case of the Series D Preferred Stock, and by the holders of 75% of the outstanding Series D-1 Preferred Stock, in the case of the Series D-1 Preferred Stock, and such waiver shall be binding on all holders of each such series of Preferred Stock; provided that any such waiver that treats any one or more holders of a particular class or series, as applicable, in a materially adverse manner that is different than any other holder of that same class or series, as applicable, shall require the approval of such holder.

Section 6. Status of Converted Stock. In the event that any shares of Preferred Stock shall be converted pursuant to Section 3 hereof, the shares so converted shall be canceled and shall not be reissued by the corporation.

V.

A. The management of the business and the conduct of the affairs of the corporation shall be vested in its Board of Directors.

B. Subject to paragraph (h) of Section 43 of the Bylaws, the Bylaws may be altered or amended or new Bylaws adopted by the stockholders entitled to vote. The Board of Directors shall also have the power to adopt, amend or repeal Bylaws.

VI.

A. To the fullest extent permitted by the General Corporation Law as the same exists or as it 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 she or he or her or his testator or intestate is or was a director or officer of the corporation or any predecessor of the corporation or serves or served at any other enterprise as a director or officer at the request of the corporation or any predecessor to the corporation.

C. If and to the extent that the corporation may from time to time be or becomes subject to certain provisions of the California General Corporation Law (the "CGCL") pursuant to the operation of Section 2115 thereof, then, as authorized by Section 317(g) of CGCL, for the duration of any such period, the corporation shall indemnify officers, directors, employees, and agents of the corporation (and any other person to which applicable law permits the corporation to provide indemnification) in excess of that which is otherwise permitted under Section 317 of the CGCL, subject only to the limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to the corporation, its stockholders, and others.

D. No amendment or repeal of this Article VI, or the adoption of any provision of this corporation's Amended and Restated Certificate of Incorporation inconsistent with this Article VI, shall eliminate or reduce the effect of this Article VI, in respect of any matter occurring, or any action or proceeding accruing or arising that, but for this Article VI, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision, except as required by law.

VII.

A. The corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this reservation.

B. Notwithstanding Article VII(A) above, the corporation may not amend, alter, change or repeal the provision contained in Article IV Section 4(b)(v) of this Amended and Restated Certificate of Incorporation without the prior written consent of a majority of the holders of shares of Common Stock then outstanding.

VIII.

The corporation is to have perpetual existence.

IX.

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

X.

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the corporation may provide. The books of the corporation may be kept 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.

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ATRICA SANTA CLARA

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IN WITNESS WHEREOF, the corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its President and Chief Executive Officer, this 21st day of March, 2004.

ATRICA, INC.

A handwritten signature in black ink, appearing to read "Vivek Ragavan", is written over a horizontal line.

Vivek Ragavan
President and Chief Executive Officer