

**FOURTH
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
AVESO, INC.**

Nicholas J. Wood, the Executive Chairman of Aveso, Inc., hereby certifies that:

1. The original name of the corporation was Commotion Inc. (the "**Corporation**"). The original Certificate of Incorporation of the Corporation was filed with the Delaware Secretary of State on June 15, 2004, was amended to change the name of the Corporation to Aveso, Inc. on October 8, 2004, was restated effective May 5, 2006, was further restated effective August 22, 2006 and was further restated effective January 16, 2007.
2. He is the duly elected and acting Executive Chairman of the Corporation.
3. Pursuant to Sections 242 and 245 of the Delaware General Corporation Law ("**DGCL**"), this Amended and Restated Certificate of Incorporation of the Corporation was adopted by the Corporation's Board of Directors (the "**Board**") and pursuant to Sections 242, 245 and 228 of the DGCL, this Amended and Restated Certificate of Incorporation was approved by stockholders holding a majority of the Company's preferred stock, voting as a separate class, and a majority of all shares of the Company's capital stock.
4. The text of the Corporation's Certificate of Incorporation as heretofore amended or supplemented is hereby restated and further amended to read in its entirety as follows:

ARTICLE I

The name of the Corporation is Aveso, Inc.

ARTICLE II

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

ARTICLE III

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of the registered agent at such address is The Corporation Trust Company.

ARTICLE IV

The total number of shares of stock that the corporation shall have authority to issue is Forty-Five Million Seven Hundred and Twenty Thousand (45,720,000), consisting of Seventeen Million (17,000,000) shares of Common Stock, \$0.01 par value per share, and Twenty-Eight Million Seven Hundred and Twenty Thousand (28,720,000) shares of Preferred Stock, \$0.01 par value per share, divided into five series. The first series of Preferred Stock shall be designated "**Series A Preferred Stock**" and shall consist of One Million (1,000,000) shares, the second series of Preferred Stock shall be designated "**Series A-1 Preferred Stock**" and shall consist of Five Hundred Thousand (500,000) shares, the third series of Preferred

Stock shall be designated the "**Series A-2 Preferred Stock**" and shall consist of One Million (1,000,000) shares, the fourth series of Preferred Stock shall be designated the "**Series B Preferred Stock**" and shall consist of Thirteen Million One Hundred and Ten Thousand (13,110,000) shares, and the fifth series of Preferred Stock shall be designated the "**Series B-1 Preferred Stock**" and shall consist of Thirteen Million One Hundred and Ten Thousand (13,110,000) shares.

ARTICLE V

The terms and provisions of the Common Stock and Preferred Stock are as follows:

1. Definitions. For purposes of this ARTICLE V, the following definitions shall apply:

(a) "**Conversion Price**" shall mean (i) \$5.00 per share for the Series A Preferred Stock (subject to adjustment from time to time for Recapitalizations and as otherwise set forth elsewhere herein), (ii) \$5.00 per share for the Series A-1 Preferred Stock (subject to adjustment from time to time for Recapitalizations and as otherwise set forth elsewhere herein) (iii) in the case of the Series A-2 Preferred Stock, the conversion price per share of the Series A Preferred Stock in effect immediately prior to the consummation of the Qualified Financing giving rise to the issuance of such Series A-2 Preferred Stock, (iv) \$1.00 per share for the Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations and as otherwise set forth elsewhere herein) and (v) with respect to the Series B-1 Preferred Stock, the conversion price of the Series B Preferred Stock in effect immediately prior to the consummation of the Qualified Financing giving rise to the issuance of such Series B-1 Preferred Stock.

(b) "**Convertible Securities**" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(c) "**Corporation**" shall mean Aveso, Inc.

(d) "**Distribution**" shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, (iii) repurchase of capital stock of the Corporation in connection with the settlement of disputes with any stockholder, or (iv) any other repurchase or redemption of capital stock of the Corporation approved by the holders of the Preferred Stock of the Corporation voting as a separate class.

(e) "**Dividend Rate**" shall mean an annual rate of \$0.40 per share for the Series A Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), and an annual rate of \$0.08 per share for the Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(f) **"Liquidation Preference"** shall mean \$5.00 per share for the Series A Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), \$5.00 per share for the Series A-1 Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), \$5.00 per share for the Series A-2 Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), \$1.00 per share for the Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), and \$1.00 per share for the Series B-1 Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(g) **"Options"** shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(h) **"Original Issue Price"** shall mean \$5.00 per share for the Series A Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), \$5.00 per share for the Series A-1 Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), \$5.00 per share for the Series A-2 Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), \$1.00 per share for the Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), and \$1.00 per share for the Series B-1 Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(i) **"Preferred Stock"** shall mean the Series A Preferred Stock, the Series A-1 Preferred Stock, the Series A-2 Preferred Stock, the Series B Preferred Stock, and the Series B-1 Preferred Stock.

(j) **"Recapitalization"** shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event.

2. Dividends.

(a) **Preferred Stock.** In any calendar year, the holders of outstanding shares of Series B Preferred Stock and Series B-1 Preferred Stock (collectively, the **"Series B Equivalent Stock"**), shall be entitled to receive dividends, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor, at the Dividend Rate specified for the Series B Preferred Stock, payable in preference and priority to any declaration or payment of any Distribution on the Series A Preferred Stock and Series A-2 Preferred Stock (the **"Series A Equivalent Stock"**), Series A-1 Preferred Stock and the Common Stock of the Corporation in such calendar year. After payment of the dividend preference to the holders of Series B Equivalent Stock in any calendar year, the holders of outstanding shares of Series A Equivalent Stock and the holders of Series B Equivalent Stock shall each be entitled to receive dividends, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor, at the Dividend Rate specified for the Series A Preferred Stock and payable in preference and priority to any declaration or payment of any Distribution on the Series A-1 Preferred Stock and the Common Stock of the Corporation in such calendar year. No Distributions shall be made with respect to the Series A-1 Preferred Stock and the Common Stock until all declared dividends on the Series B Equivalent Stock and Series A Equivalent Stock have been paid or set aside for payment to

the holders of Series B Equivalent Stock and Series A Equivalent Stock. The right to receive dividends on shares of Series B Equivalent Stock and Series A Equivalent Stock shall not be cumulative, and no right to such dividends shall accrue to holders of Series B Equivalent Stock and Series A Equivalent Stock by reason of the fact that dividends on said shares are not declared or paid in any calendar year.

(b) Additional Dividends. After the payment or setting aside for payment of the dividends described in Section 2(a), any additional dividends (other than dividends on Common Stock payable solely in Common Stock) declared or paid in any fiscal year shall be declared or paid among the holders of the Preferred Stock and Common Stock then outstanding in proportion to the greatest whole number of shares of Common Stock which would be held by each such holder if all shares of Preferred Stock were converted at the then-effective Conversion Rate (as defined in Section 4 hereof).

(c) Non-Cash Distributions. Whenever a Distribution provided for in this Section 2 shall be payable in property other than cash, the value of such Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors.

3. Liquidation Rights.

(a) Series B Liquidation Preference. In the event of any Liquidation Event (as defined below), either voluntary or involuntary, the holders of the Series B Equivalent Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of Series A Equivalent Stock, Series A-1 Preferred Stock and Common Stock by reason of their ownership of such stock, an amount per share for each share of Series B Equivalent Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series B Equivalent Stock and (ii) all declared but unpaid dividends (if any) on such share of Series B Equivalent Stock. If upon the occurrence of such event, the assets of the Corporation legally available for distribution to the holders of the Series B Equivalent Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a), then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and pro rata among the holders of the Series B Equivalent Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a).

(b) Series A Liquidation Preference. After the payment or setting aside for the payment to the holders of Series B Equivalent Stock of the full amounts specified in Section 3(a) above, the holders of the Series A Equivalent Stock shall be entitled to receive, prior to and in preference to any Distribution of any of the assets of the Corporation to the holders of Series A-1 Preferred Stock and Common Stock by reason of their ownership of such stock, and to the exclusion of any Distribution to the holders of Series B Equivalent Stock, an amount per share for each share of Series A Equivalent Stock held by them equal to the sum of (i) the Liquidation Preference specified for each share of Series A Equivalent Stock and (ii) all declared but unpaid dividends (if any) on each share of Series A Equivalent Stock. If upon the occurrence of such event, and after payment or setting aside of payment to the holders of Series B Equivalent Stock of the full amounts specified in Section 3(a) above, the assets of the Corporation legally available for distribution to the holders of the Series A Equivalent Stock are insufficient to permit the payment to such holders of the full amounts

specified in this Section 3(b), then the remaining assets of the Corporation legally available for distribution shall be distributed with equal priority and pro rata among the holders of the Series A Equivalent Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(b).

(c) Series A-1 Liquidation Preference. After the payment or setting aside for the payment to the holders of Series B Equivalent Stock and Series A Equivalent Stock of the full amounts specified in Section 3(a) and Section 3(b) above, the holders of the Series A-1 Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership of such stock, and to the exclusion of any Distribution to the holders of Series B Equivalent Stock and Series A Equivalent Stock, an amount per share for each share of Series A-1 Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series A-1 Preferred Stock and (ii) all declared but unpaid dividends (if any) on such share of Series A-1 Preferred Stock. If upon the occurrence of such event, and after payment or setting aside of payment to the holders of Series B Equivalent Stock and Series A Equivalent Stock of the full amounts specified in Section 3(a) and Section 3(b), respectively, the assets of the Corporation legally available for distribution to the holders of the Series A-1 Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(c), then the remaining assets of the Corporation legally available for distribution shall be distributed with equal priority and pro rata among the holders of the Series A-1 Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(c).

(d) Remaining Assets. After the payment to the holders of Preferred Stock then outstanding of the full preferential amounts specified above, the entire remaining assets of the Corporation legally available for distribution by the Corporation shall be distributed with equal priority and pro rata among the holders of the Preferred Stock and Common Stock in proportion to the number of shares of Common Stock held by them, with the shares of Preferred Stock being treated for this purpose as if they had been converted to shares of Common Stock at the then applicable Conversion Rate.

(e) Reorganization. For purposes of this Section 3, a "Liquidation Event" shall include, (i) the merger or consolidation of (1) the Corporation with another entity, or (2) a subsidiary of the Corporation in a transaction in which the Corporation issues its capital stock, by means of any transaction or series of related transactions to which the Corporation is party, other than a transaction or series of transactions in which the holders of the voting securities of the Corporation outstanding immediately prior to such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving entity), as a result of shares in the Corporation held by such holders prior to such transaction, at least fifty percent (50%) of the total voting power represented by the voting securities of the Corporation or such surviving entity outstanding immediately after such transaction or series of transactions; (b) a sale, lease or other conveyance of all or substantially all of the assets of the Corporation; or (c) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary; provided, however, that a transaction shall not constitute a Liquidation Event if its sole purpose is to change the state of the Corporation's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held

this Corporation's securities immediately prior to such transaction. The treatment of any particular transaction or series of related transactions as a Liquidation Event may be waived by the vote or written consent of the holders of at least 66⅔% of the outstanding shares of Series A Equivalent Stock and Series B Equivalent Stock, voting together as a single class based upon the number of shares of Common Stock which would be held by each such holder if such shares were converted at the then-effective Conversion Rate.

(f) Effecting a Deemed Liquidation Event.

(i) The Corporation shall not have the power to effect a Liquidation Event referred to in Section 3(e)(i)(1) above unless the agreement or plan of merger or consolidation for such transaction (the "Merger Agreement") provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3(a) to 3(d) above.

(ii) In the event of a Liquidation Event referred to in Sections 3(e)(i)(2) or 3(e)(ii) above, if the Corporation does not effect a dissolution of the Corporation under the DGCL within 90 days after such Liquidation Event, then (1) the Corporation shall send a written notice to each holder of Preferred Stock no later than the 90th day after the Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (2) to require the redemption of such shares of Preferred Stock, and (ii) if the holders of at least fifty percent of the then outstanding shares of Preferred Stock so request in a written instrument delivered to the Corporation not later than 120 days after such Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation) (the "Net Proceeds"), to the extent legally available therefor, on the 150th day after such Liquidation Event, to redeem all outstanding shares of Preferred Stock at a price per share equal to the Liquidation Preference, plus all accumulated dividends on each such series. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Net Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, or if the Corporation does not have sufficient lawfully available funds to effect such redemption, the Corporation shall redeem each series of Preferred Stock in the priority, and by application of the amounts, set forth in Sections 3(a) to 3(d) above to the fullest extent of such Net Proceeds or such lawfully available funds, as the case may be, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. Prior to the distribution or redemption provided for in this 3(f)(ii), the Corporation shall not expend or dissipate the consideration received for such Liquidation Event, except to discharge expenses incurred in connection with such Liquidation Event or in the ordinary course of business.

(g) Valuation of Non-Cash Consideration. If any assets of the Corporation distributed to stockholders in connection with any Liquidation Event are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board of Directors, except that any publicly traded securities to be distributed to stockholders in a Liquidation Event shall be valued as follows:

(i) If the securities are then traded on a national securities exchange or the NASDAQ Stock Market (or a similar national quotation system), then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange or system over the ten (10) trading day period ending five (5) trading days prior to the Distribution;

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the Distribution.

In the event of a merger or other acquisition of the Corporation by another entity, the Distribution date shall be deemed to be the date such transaction closes.

For the purposes of this Section 3(e), "trading day" shall mean any day which the exchange or system on which the securities to be distributed are traded is open and "closing prices" or "closing bid prices" shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or NASDAQ, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

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

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into that number of fully paid, non-assessable shares of Common Stock determined by dividing the Original Issue Price for the relevant series by the Conversion Price for such series. (The number of shares of Common Stock into which each share of Preferred Stock of a series may be converted is hereinafter referred to as the "Conversion Rate" for each such series.) Upon any decrease or increase in the Conversion Price for any series of Preferred Stock, as described in this Section 4, the Conversion Rate for such series shall be appropriately increased or decreased.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into fully paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "Securities Act"), covering the offer and sale of the Corporation's Common Stock, provided that the aggregate gross proceeds to the Corporation are more than \$20,000,000, or (ii) upon the receipt by the Corporation of a written request for such conversion from the holders of at least 66 2/3% of the Series A Equivalent Stock and Series B Equivalent Stock then outstanding, considered as a single class as if they had been converted to shares of Common Stock at the then applicable Conversion

Rate, or, if later, the effective date for conversion specified in such requests (each of the events referred to in (i) and (ii) are referred to herein as an "Automatic Conversion Event").

(c) Special Automatic Conversion.

(i) Trigger Event. In the event that any holder of shares of Series A Preferred Stock or Series B Preferred Stock does not participate in a Qualified Financing (as defined below) by purchasing in the aggregate, in such Qualified Financing and within the time period specified by the Corporation (provided that the Corporation has sent to each holder of Series A Preferred Stock and Series B Preferred Stock at least 30 days written notice of, and the opportunity to purchase its Pro Rata Amount (as defined below) of, the Qualified Financing), such holder's Pro Rata Amount, then effective upon, subject to, and concurrently with, the consummation of the Qualified Financing, the Applicable Portion (as defined below) of the shares of Series A Preferred Stock or Series B Preferred Stock, or both, held by such holder shall automatically, and without any further action on the part of such holder, be converted on a share-for-share basis into shares of Series A-2 Preferred Stock, in the case of conversion of Series A Preferred Stock, and Series B-1 Preferred Stock, in the case of conversion of the Series B Preferred Stock (the Series A-2 Preferred Stock and Series B-1 Preferred Stock being hereafter referred to as the "New Preferred Stock"). For purposes of determining the number of shares of Series A Preferred Stock or Series B Preferred Stock owned by a holder, and for determining the number of Offered Securities (as defined below) a holder of Series A Preferred Stock or Series B Preferred Stock has purchased in a Qualified Financing, all shares of Series A Preferred Stock and Series B Preferred Stock held by Affiliates (as defined below) of such holder shall be aggregated with such holder's shares and all Offered Securities purchased by Affiliates of such holder shall be aggregated with the Offered Securities purchased by such holder (provided that no shares or securities shall be attributed to more than one entity or person within any such group of affiliated entities or persons). Such conversion is referred to as a "Special Automatic Conversion".

(ii) Procedural Requirements. Upon a Special Automatic Conversion, each holder of shares of Series A Preferred Stock or Series B Preferred Stock converted pursuant to Section 4(c) shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of New Preferred Stock to which such holder is entitled pursuant to this Section 4(c) and a new certificate for the number of shares, if any, of Series A Preferred Stock or Series B Preferred Stock represented by such surrendered certificate and not converted pursuant to Section 4(c). All rights with respect to the Series A Preferred Stock and Series B Preferred Stock converted pursuant to Section 4(c), including the rights, if any, to receive notices and vote (other than as a holder of New Preferred Stock), will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the last sentence of this Section 4(c). If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its

attorney duly authorized in writing. As soon as practicable after the Special Automatic Conversion and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series A Preferred Stock or Series B Preferred Stock so converted, the Corporation shall issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of New Preferred Stock issuable on such conversion in accordance with the provisions hereof

(iii) Effect of Special Automatic Conversion. All shares of Series A Preferred Stock and Series B Preferred Stock converted pursuant to Section 4(c) shall, from and after the time of the Special Automatic Conversion, no longer be deemed to be outstanding and, notwithstanding the failure of the holder or holders thereof to surrender the certificates for such shares on or prior to such time, all rights with respect to such shares shall immediately cease and terminate at the time of the Special Automatic Conversion, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Such converted Series A Preferred Stock and Series B Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock or Series B Preferred Stock accordingly.

(iv) Definitions. For purposes of this Section 4(c), the following definitions shall apply:

(1) "Affiliate" shall mean, with respect to any holder of shares of Series A Preferred Stock or Series B Preferred Stock, any person, entity or firm which, directly or indirectly, controls, is controlled by or is under common control with such holder, including, without limitation, any entity of which the holder is a partner or member, any partner, officer, director, member or employee of such holder and any venture capital fund now or hereafter existing of which the holder is a partner or member which is controlled by or under common control with one or more general partners of such holder or shares the same management company with such holder.

(2) "Applicable Portion" shall mean, with respect to any holder of shares of Series A Preferred Stock or Series B Preferred Stock, a number of shares of Series A Preferred Stock and Series B Preferred Stock calculated by multiplying the aggregate number of shares of Series A Preferred Stock and Series B Preferred Stock held by such holder immediately prior to a Qualified Financing by a fraction, the numerator of which is equal to the amount, if positive, by which such holder's Pro Rata Amount exceeds the number of Offered Securities actually purchased by such holder in such Qualified Financing, and the denominator of which is equal to such holder's Pro Rata Amount.

(3) "Offered Securities" shall mean the equity securities of the Corporation set aside by the Board of Directors for purchase by holders of outstanding shares of Series A Preferred Stock and Series B preferred Stock in connection with a Qualified Financing, and offered to such holders.

(4) "Pro Rata Amount" shall mean, with respect to any holder of Series A Preferred Stock or Series B Preferred Stock, the lesser of (a) the number of shares of Common Stock owned by such holder prior to the issuance of the Offered Securities

(assuming full conversion of the Preferred Stock and exercise of all outstanding convertible securities, rights, options and warrants, directly or indirectly, into Common Stock held by said holder) to (b) the total number of shares of Common Stock outstanding prior to the issuance of the Offered Securities (assuming full conversion of the Preferred Stock and exercise of all outstanding convertible securities, rights, options and warrants), or (b) the maximum number of Offered Securities that such holder is permitted by the Corporation to purchase in such Qualified Financing, after giving effect to any cutbacks or limitations established by the Board of Directors and applied on a pro rata basis to all holders of Series A Preferred Stock and Series B Preferred Stock.

(5) "Qualified Financing" shall mean any transaction involving the issuance or sale of equity securities of the Corporation after the date of the filing of this Amended and Restated Certificate of Incorporation which would result in the reduction of the Conversion Price of the Series A Preferred Stock pursuant to the terms of the Amended and Restated Certificate of Incorporation (without giving effect to the operation of Section 4(k)), unless the holders of at least a majority of the Series A Preferred Stock and Series B Preferred Stock, calculated as if the same had been converted into common stock at the Conversion Price, elect, by written notice sent to the Corporation at least 10 days prior to the consummation of the Qualified Financing, that such transaction not be treated as a Qualified Financing for purposes of this Section 4(c).

(d) 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, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board of Directors. For such purpose, all shares of Preferred Stock held by each holder of Preferred Stock shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, he shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock or (B) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that he elects to convert the same; provided, however, that on the date of an Automatic Conversion Event, 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; provided further, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Preferred Stock are 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. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been

surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

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 Preferred Stock, 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, plus any declared and unpaid dividends on the converted Preferred 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 Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date; provided, however, that if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act or a merger, sale, financing, or liquidation of the Corporation or other event, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction or upon the occurrence of such event, in which case the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such transaction or the occurrence of such event.

(e) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definition. For purposes of this Section 4(e), "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 4(e)(iii), deemed to be issued) by the Corporation after the filing of this Amended and Restated Certificate of Incorporation, other than issuances or deemed issuances of

(1) up to 2,150,000 shares (as adjusted for Recapitalizations) of common stock (or such greater number as may be unanimously approved by the Board of Directors), in the aggregate, issued or issuable to officers, employees, directors, consultants, placement agents, and other service providers of the Company (or any subsidiary) pursuant to stock grants, option plans, purchase plans, agreements or other employee stock incentive programs or arrangements approved by the Board of Directors of the Company;

(2) shares of Common Stock issued upon the exercise or conversion of Options or Convertible Securities outstanding as of the date of the filing of this Amended and Restated Certificate of Incorporation, other than Options or Convertible Securities counted against the limits set forth in Section 4(e)(i)(1) above;

(3) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made pursuant to Section 4(f), 4(g) or 4(h) hereof,

(4) shares of Common Stock issued in a registered public offering under the Securities Act pursuant to which all outstanding shares of Preferred Stock are automatically converted into Common Stock pursuant to an Automatic Conversion Event;

(5) shares of Common Stock issued or issuable pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided, that such issuances are approved by the Board of Directors;

(6) shares of Common Stock issued or issuable to banks, equipment lessors or other financial institutions pursuant to a debt financing or commercial leasing transaction approved by the Board of Directors;

(7) shares of Common Stock issued or issuable in connection with any settlement of any action, suit, proceeding or litigation unanimously approved by the Board of Directors;

(8) shares of Common Stock issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors; and

(9) shares of Common Stock issued or issuable to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors;

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price of the Series A Preferred Stock or Series B Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (as determined pursuant to Section 4(e)(v)) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to such issue, for the Series A Preferred Stock or the Series B Preferred Stock, respectively.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation at any time or from time to time after the date of the filing of this Certificate of Incorporation 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, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities, shall be deemed to have been issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which shares are deemed to be issued:

(1) no further adjustment in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares

of Common Stock in connection with the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities such as this Section 4(e) or pursuant to Recapitalization provisions of such Options or Convertible Securities such as Sections 4(f), 4(g) and 4(h) hereof), the Conversion Price of each series of Preferred Stock and any subsequent adjustments based thereon shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount above the Conversion Price that would have resulted from any other issuances of Additional Shares of Common Stock and any other adjustments provided for herein between the original adjustment date and such readjustment date;

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

(a) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common 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 such exercised Options plus the consideration actually received by the Corporation upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time 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 such exercised Options, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 4(e)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(5) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as

of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Section 4(e)(iii) as of the actual date of their issuance.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(e)(iii)) without consideration or for a consideration per share less than the Conversion Price of the Series A Preferred Stock or Series B Preferred Stock in effect on the date of and immediately prior to such issue, then, the Conversion Price of the Series A Preferred Stock or Series B Preferred Stock, respectively (but not, for the avoidance of doubt, the conversion price of the Series A-1 Preferred Stock, Series A-2 Preferred Stock or Series B-1 Preferred Stock), 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 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, 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. Notwithstanding the foregoing, the Conversion Price shall not be reduced at such time if the amount of such reduction would be less than \$0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal \$0.01 or more in the aggregate. For the purposes of this Section 4(e)(iv), all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this Section 4(e), the consideration received by the Corporation for the issue (or deemed 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 before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with such issuance;

(b) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; 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, as reasonably determined in good faith by the Board of Directors.

(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(e)(iii) shall be determined by dividing

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

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

(f) Adjustments for Subdivisions or Combinations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Prices in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) Adjustments for Subdivisions or Combinations of Preferred Stock. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be subdivided (by stock split by payment of a stock dividend or otherwise), into a greater number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(h) Adjustments for Reclassification, Exchange and Substitution. Subject to Section 3 above ("Liquidation Rights"), 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 or combination of shares provided for above), then, in any such event, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon

conversion of such series of Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(i) No Impairment. The Corporation will not through any reorganization, transfer of assets, 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 Preferred Stock against impairment. Notwithstanding the foregoing, nothing in this Section 4(i) shall prohibit the Corporation from amending its Certificate of Incorporation with the requisite consent of its stockholders and the board of directors.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of 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 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 Preferred Stock.

(k) 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 by the consent or vote of the holders of the majority of the outstanding shares of such series either before or after the issuance causing the adjustment.

(l) Notices of Record Date. In the event that this Corporation shall propose at any time:

(i) to declare any Distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iii) to voluntarily liquidate or dissolve or to enter into any transaction deemed to be a Liquidation Event pursuant to Section 3(e);

then, in connection with each such event, this Corporation shall send to the holders of the Preferred Stock at least 10 days' prior written notice of the date on which a record shall be taken for such Distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto and, if applicable, the amount and character of such Distribution) or for determining rights to vote in respect of the matters referred to in (ii) and (iii) above.

Such written notice shall be given by first class mail (or express courier), postage prepaid, addressed to the holders of Preferred Stock at the address for each such holder as shown on the books of the Corporation and shall be deemed given on the date such notice is mailed.

The notice provisions set forth in this section may be shortened or waived prospectively or retrospectively by the vote or written consent of the holders of a majority of the Preferred Stock, voting together as a single class.

(m) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the 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 Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

5. Voting

(a) Restricted Class Voting. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(b) No Series Voting. Other than as provided herein or required by law, there shall be no series voting.

(c) Preferred Stock. Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock held by such holder could be converted as of the record date. The holders of shares of the Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. Holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted), shall be disregarded.

(d) Election of Directors. The holders of Series A Equivalent Stock and Series B Equivalent Stock, voting as a single, separate class, shall be entitled to elect two members of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, by vote of 66 2/3% of the shares of common stock into which such shares of Series A Equivalent Stock and Series B Equivalent Stock can be converted. The holders of Common Stock and Preferred Stock, voting together as a single class, shall be entitled to elect any additional members of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, one of whom shall be the Chief Executive Officer of the Company. If a vacancy on the Board of Directors is to be filled by the Board of Directors, only directors

elected by the same class or classes of stockholders as those who would be entitled to vote to fill such vacancy shall vote to fill such vacancy.

(e) 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 stock of the Corporation.

(f) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held.

6. Amendments and Changes.

(a) As long as any of the Series A Equivalent Stock shall be issued and outstanding, the Corporation shall not (whether by merger, consolidation, operation of law, or otherwise), without first obtaining the written approval of the holders of a majority of the outstanding shares of the Series A Equivalent Stock, amend, alter or repeal any provision of the Amended and Restated Certificate of Incorporation in a manner which would materially and adversely alter or change the rights, preferences, privileges or powers of, or restrictions provided for the benefit of, the Series A Equivalent Stock.

(b) As long as any of the Series B Equivalent Stock shall be issued and outstanding, the Corporation shall not (whether by merger, consolidation, operation of law, or otherwise), without first obtaining the written approval of the holders of a majority of the outstanding shares of the Series B Equivalent Stock, amend, alter or repeal any provision of the Amended and Restated Certificate of Incorporation in a manner which would materially and adversely alter or change the rights, preferences, privileges or powers of, or restrictions provided for the benefit of, the Series B Equivalent Stock.

(c) As long as any of the Series A Equivalent Stock or the Series B Equivalent Stock shall be issued and outstanding, the Corporation shall not (whether by merger, consolidation, operation of law, or otherwise), without first obtaining the written approval of the holders of a majority of the outstanding shares of the Series A Equivalent Stock and the Series B Equivalent Stock voting together as a single and separate class on an as converted to basis:

(i) amend, alter or repeal any provision of the Amended and Restated Certificate of Incorporation or bylaws of the Corporation (including pursuant to a merger) if such action would materially and adversely alter or change the rights, preferences, privileges or powers of, or restrictions provided for the benefit of, the series of Preferred Stock to which it relates;

(ii) increase or decrease (other than for decreases resulting from conversion of the Preferred Stock pursuant to Section 4(c) above) the authorized number of shares of Preferred Stock or any series thereof;

(iii) authorize or create (by reclassification, merger or otherwise) any new class or series of shares having rights, preferences or privileges with respect to dividends, or payments upon liquidation senior to or on a parity with any series of Preferred

Stock or having voting rights other than those granted to the Preferred Stock generally (other than pursuant to Section 4(c) above);

(iv) enter into any transaction or series of related transactions deemed to be a Liquidation Event pursuant to Section 3(e) above;

(v) authorize a merger, acquisition or sale of all or substantially all of the assets of the Corporation or any of its subsidiaries (other than a merger exclusively to effect a change of domicile of the Corporation);

(vi) voluntarily liquidate or dissolve;

(vii) increase or decrease the size of the Board of Directors;

(viii) encumber or grant a security interest in all or substantially all of the assets of the Corporation in connection with any indebtedness of the Corporation;

(ix) acquire a material amount of assets through a merger or purchase of all or substantially all of the assets or capital stock of another entity,

(x) declare or pay any Distribution with respect to the Preferred Stock or Common Stock of the Corporation;

(xi) increase the number of shares authorized for issuance under any existing stock or option plan or create any new stock or option plan; or

(xii) amend this Section 6(c).

7. Reissuance of Preferred Stock. In the event that any shares of Preferred Stock shall be converted pursuant to Section 4 or otherwise repurchased by the Corporation, the shares so converted, redeemed or repurchased shall be cancelled and shall not be issuable by this Corporation.

8. Notices. Any notice required by the provisions of this ARTICLE V to be given to the holders of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

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.

ARTICLE VIII

Unless otherwise set forth herein, the number of directors which constitute the Board of Directors of the Corporation shall be designated as set forth in the Bylaws of the Corporation.

ARTICLE IX

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

ARTICLE X

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

2. 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.

3. Neither any amendment nor repeal of this ARTICLE X nor the adoption of any provision of this Corporation's Certificate of Incorporation inconsistent with this ARTICLE X, shall eliminate or reduce the effect of this ARTICLE X, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this ARTICLE X, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

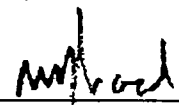
ARTICLE XI

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 of Directors or in the Bylaws of the Corporation.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation
has been signed under the seal of this corporation as of this 29 day of October, 2007.

AVESO, INC.

By:



Nicholas J. Wood
Executive Chairman