

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION**

**OF**

**ALTERPOINT, INC.  
(a Delaware corporation)**

**(Pursuant to Sections 228, 242 and 245 of the  
General Corporation Law of the State of Delaware)**

AlterPoint, Inc. (the "**Corporation**"), a corporation organized and existing under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (the "**DGCL**"), hereby certifies as follows:

1. That the Corporation was originally incorporated on February 28, 2001 pursuant to the DGCL under the name IT Newco, Inc.
2. Pursuant to Sections 228, 242 and 245 of the DGCL, this Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Certificate of Incorporation of the Corporation, as amended through the date hereof.
3. The text of the Certificate of Incorporation of the Corporation is hereby restated in its entirety to read as follows:

**ARTICLE ONE**

The name of the Corporation is AlterPoint, Inc.

**ARTICLE TWO**

The address of the registered office of the Corporation in the State of Delaware is c/o Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware. The name of the registered agent at that address is The Corporation Trust Company.

**ARTICLE THREE**

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may now or hereafter be organized under the DGCL.

**ARTICLE FOUR**

**Section 1. AUTHORIZED CAPITAL STOCK.** The total number of shares of capital stock that the Corporation shall have authority to issue is 60,500,000, consisting of 35,000,000 shares of common stock, par value \$0.001 per share (the "**Common Stock**"), and 25,500,000 shares of preferred stock, par value \$0.001 per share (the "**Preferred Stock**").

Authority is hereby expressly vested in the board of directors of the Corporation (the "**Board**") to establish and authorize the issuance of the Preferred Stock from time to time in one or more series and, with respect to each series of the Preferred Stock, to fix and determine by resolution or resolutions, in the manner provided for by law, the number of shares to constitute the series, the designation of the series and, subject to the provisions of the DGCL and the protective provisions of Section 2 of this Article Four, the rights and preferences of the shares of any series so established.

The Board may decrease the number of shares designated for any existing series of the Preferred Stock; provided that the Board may not decrease the number of shares within a series below the number of shares within such series that is then issued.

Each share of the Preferred Stock within an individual series shall be identical in all respects with the other shares of such series, except as to the date, if any, from which dividends on such share shall accumulate and other details which because of the passage of time are required to be made in order for the substantive rights of the holders of the shares of such series to be identical.

The Corporation may purchase, directly or indirectly, its own shares to the extent that may be allowed by law.

Except as may be otherwise specifically set forth in the designations for a series of Preferred Stock, the number of authorized shares of any class or series of stock of the Corporation may be increased or decreased (but not below the number of shares of such class or series then outstanding) by an amendment to this Certificate approved by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote on such amendment voting together as a single class, and no such class or series of stock shall be entitled to vote on such amendment as a separate class.

**Section 2. DESIGNATION OF PREFERRED STOCK.** 677,855 shares of Preferred Stock are designated as the Corporation's Series A Convertible Preferred Stock (the "**Series A Preferred Stock**"), 8,463,938 shares of Preferred Stock are designated as the Corporation's Series B Convertible Preferred Stock (the "**Series B Preferred Stock**") and 16,358,207 shares of Preferred Stock are designated as the Corporation's Series C Convertible Preferred Stock (the "**Series C Preferred Stock**"). The voting powers, preferences, and relative participation, optional, or other special rights and privileges and qualifications, limitations, or restrictions are as set forth below:

## **2.1 Dividends.**

(a) Preferred Stock. The holders of the outstanding shares of Series C Preferred Stock shall be entitled to receive dividends from time to time out of any assets legally available for payment of dividends at the annual rate of 8.0% of the Series C Liquidation Preference, prior and in preference to any declaration or payment of any dividend (payable other than solely in Common Stock or other securities and rights convertible into or entitling the holder of such rights to receive solely shares of Common Stock of the Corporation) on the Series A Preferred Stock, Series B Preferred Stock, Common Stock or Equity Securities ranking junior to the Series C Preferred Stock with respect to dividends. Dividends on each share of Series C

Preferred Stock shall be cumulative and shall accrue on each share from day to day until paid, whether or not earned or declared, and whether or not there are profits, surplus, or other funds legally available for the payment of dividends. Subject to the foregoing, the holders of the outstanding shares of Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive dividends from time to time out of any assets legally available for payment of dividends at the annual rate of 8.0% of the Liquidation Preference for such shares, prior and in preference to any declaration or payment of any dividend (payable other than solely in Common Stock or other securities and rights convertible into or entitling the holder of such rights to receive solely shares of Common Stock of the Corporation) on the Common Stock or Equity Securities ranking junior to the Series A Preferred Stock and Series B Preferred Stock with respect to dividends. Dividends on each share of Series A Preferred Stock and Series B Preferred Stock shall be cumulative and shall accrue on each share from day to day until paid, whether or not earned or declared, and whether or not there are profits, surplus, or other funds legally available for the payment of dividends. All accrued but unpaid dividends on each share of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be payable in cash upon the liquidation, dissolution, or winding up of the Corporation as provided in Section 2.2 of this Article Four or upon the redemption of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock as provided in Section 2.3 of this Article Four.

(b) Priority on Dividends; Participation. Unless the full amount of all accrued or declared but unpaid dividends on the Series C Preferred Stock shall have been paid in full or declared in full and a sum sufficient for the payment of such dividends reserved and irrevocably set apart, (i) no dividend or distribution (other than a dividend payable solely in Common Stock or other securities and rights convertible into or entitling the holder of such rights to receive solely shares of Common Stock of the Corporation) shall be declared or paid on any Equity Securities ranking junior to the Series C Preferred Stock with respect to dividends or distributions and (ii) no shares of Equity Securities ranking junior to the Series C Preferred Stock with respect to dividends or distributions shall be purchased, redeemed, or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption, or acquisition of any such shares of Equity Securities; provided that this restriction shall not apply to (a) the repurchase of capital stock pursuant to the Right of First Refusal and Co-Sale Agreement or the redemption of Series C Preferred Stock pursuant to the terms of this Amended and Restated Certificate of Incorporation or (b) the repurchase of shares of Common Stock from directors or employees of, or consultants or advisors to, the Corporation or any Subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at the original purchase price of such shares upon the occurrence of certain events, including without limitation, the termination of employment by or service to the Corporation or any Subsidiary. Unless the full amount of all accrued or declared but unpaid dividends on the Series A Preferred Stock and Series B Preferred Stock shall have been paid in full or declared in full and a sum sufficient for the payment of such dividends reserved and irrevocably set apart, (i) no dividend or distribution (other than a dividend payable solely in Common Stock or other securities and rights convertible into or entitling the holder of such rights to receive solely shares of Common Stock of the Corporation) shall be declared or paid on any Equity Securities ranking junior to the Series A Preferred Stock and Series B Preferred Stock with respect to dividends or distributions and (ii) no shares of Equity Securities ranking junior to the Series A Preferred Stock and Series B Preferred Stock with respect to dividends or distributions shall be purchased, redeemed, or acquired by the Corporation and no monies shall

be paid into or set aside or made available for a sinking fund for the purchase, redemption, or acquisition of any such shares of Equity Securities; provided that this restriction shall not apply to (a) the repurchase of capital stock pursuant to the Right of First Refusal and Co-Sale Agreement or the redemption of Series A Preferred Stock and Series B Preferred Stock pursuant to the terms of this Amended and Restated Certificate of Incorporation or (b) the repurchase of shares of Common Stock from directors or employees of, or consultants or advisors to, the Corporation or any Subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at the original purchase price of such shares upon the occurrence of certain events, including without limitation, the termination of employment by or service to the Corporation or any Subsidiary. If, after dividends on the full preferential amounts specified in Section 2.1(a) of Article Four for the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock have been paid or declared and irrevocably set apart, the Board shall declare additional dividends out of funds legally available for payment of dividends in that calendar year, then the aggregate amount of such additional dividends shall be distributed to the holders of Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock pro rata according to the number of shares of Common Stock held by such holders, where each holder of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock is treated for this purpose as holding the greatest whole number of shares of Common Stock then issuable upon conversion of all shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock held by such holder pursuant to Section 2.5 of this Article Four.

(c) Non-Cash Dividends. Whenever a dividend provided for in this Section 2.1 of Article Four shall be payable in property other than cash, the value of such dividend shall be deemed to be the Fair Market Value of such property.

## **2.2 Liquidation Preference**

(a) Preferred Stock. In the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary, the holders of the Series C Preferred Stock, shall be entitled to receive, prior and in preference to any payment or distribution and setting apart for payment or distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock and to the holders of any Equity Securities ranking junior to the Series C Preferred Stock with respect to liquidation, including without limitation the Series A Preferred Stock and Series B Preferred Stock, an amount for each share of Series C Preferred Stock then held by them equal to \$1.39474 (as adjusted for any stock splits, stock dividends, recapitalizations, combinations, or similar transactions with respect to such shares after the filing date of this Amended and Restated Certificate of Incorporation, the "**Series C Original Issue Price**") plus all accrued or declared but unpaid dividends on the Series C Preferred Stock to and including the date of payment of such amount (the "**Series C Liquidation Preference**"). If, upon the occurrence of such event, the assets and funds legally available for distribution among the holders of the Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full Series C Liquidation Preference, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series C Preferred Stock, based upon the aggregate Series C Liquidation Preferences of the shares of Series C Preferred Stock held by each such holder. Upon completion of the distributions required by the foregoing, the holders of the Series A Preferred

Stock and Series B Preferred Stock shall be entitled to receive, prior and in preference to any payment or distribution and setting apart for payment or distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock and to the holders of any Equity Securities ranking junior to the Series A Preferred Stock and Series B Preferred Stock with respect to liquidation, an amount (i) for each share of Series A Preferred Stock then held by them equal to \$13.00 (as adjusted for any stock splits, stock dividends, recapitalizations, combinations, or similar transactions with respect to such shares after the filing date of this Amended and Restated Certificate of Incorporation, the "**Series A Original Issue Price**") plus all accrued or declared but unpaid dividends on the Series A Preferred Stock to and including the date of payment of such amount (the "**Series A Liquidation Preference**"), or (ii) for each share of Series B Preferred Stock then held by them equal to \$0.70889 (as adjusted for any stock splits, stock dividends, recapitalizations, combinations, or similar transactions with respect to such shares after the filing date of this Amended and Restated Certificate of Incorporation, the "**Series B Original Issue Price**") plus all accrued or declared but unpaid dividends on the Series B Preferred Stock to and including the date of payment of such amount (the "**Series B Liquidation Preference**"). If, upon the occurrence of such event, the assets and funds legally available for distribution among the holders of the Series A Preferred Stock and Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full Series A Liquidation Preference and Series B Liquidation Preference, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock and Series B Preferred Stock based upon the aggregate Series A Liquidation Preferences and Series B Liquidation Preferences of the shares of Series A Preferred Stock and Series B Preferred Stock held by each such holder. The Series A Original Issue Price, the Series B Original Issue Price and the Series C Original Issue Price are each referred to herein as an "**Original Issue Price**" and the Series A Liquidation Preference, the Series B Liquidation Preference and the Series C Liquidation Preference are each referred to herein as a "**Liquidation Preference**."

(b) Participation Rights. If the assets and funds of the Corporation legally available for distribution to the Corporation's stockholders exceed the aggregate Liquidation Preferences payable to the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock pursuant to Section 2.2(a) of this Article Four, then, after the payments required by Section 2.2(a) of this Article Four shall have been made or irrevocably set apart for payment, the remaining assets and funds of the Corporation available for distribution to the Corporation's stockholders shall be distributed ratably among the holders of the Series A Preferred Stock, the holders of the Series B Preferred Stock, the holders of the Series C Preferred Stock and the holders of Common Stock in proportion to the number of shares of Common Stock then held by them (where each outstanding share of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock is treated for this purpose as having been converted into the number of shares of Common Stock into which such share of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock could then be converted pursuant to Section 2.5 of this Article Four) until the aggregate amount of the payments made or irrevocably set apart for payment to the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock pursuant to Section 2.2(a) and Section 2.2(b) of this Article Four equals three times (i) the Series A Original Issue Price per share of Series A Preferred Stock, (ii) the Series B Original Issue Price per share of Series B Preferred Stock, and (iii) the Series C Original Issue Price per share of Series C Preferred Stock, respectively, and, thereafter, any remaining assets

and funds of the Corporation available for distribution to the Corporation's stockholders shall be distributed ratably among the holders of Common Stock pro rata according to the number of shares of Common Stock then held by each of them. Notwithstanding anything in this Section 2.2(b) to the contrary, if upon any liquidation, dissolution or winding up of the Corporation the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock would receive more than the amounts specified in Section 2.2(a) and Section 2.2(b) had such holders converted their shares of Preferred Stock to Common Stock immediately prior to such liquidation, dissolution or winding up, then the liquidation payment made to such holders pursuant to this Section 2.2 shall equal the amount such holders would receive if they had so converted their Preferred Stock to Common Stock.

(c) Merger or Sale of Assets. For purposes of this Section 2.2 of Article Four, unless determined otherwise by the affirmative vote of the holders of at least 66<sup>2</sup>/<sub>3</sub>% of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock then outstanding (voting together as a single class, on an as-converted basis), including the holders of at least a majority of the Series C Preferred Stock then outstanding, a liquidation, dissolution, or winding up of the Corporation shall be deemed to be occasioned by, and the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be entitled to receive in cash, securities, or other property (valued at Fair Market Value) amounts as specified in Section 2.2(a) and Section 2.2(b) above at the closing of, (i) a consolidation, acquisition or merger of the Corporation with or into one or more other corporations or other business organizations, (ii) the sale, lease, or transfer of all or substantially all of the assets of the Corporation, (iii) the exclusive and unrestricted licensing of all or substantially all of the intellectual property owned by the Corporation, or (iv) any other form of corporate reorganization in which outstanding shares of the Corporation are exchanged for or converted into cash, securities of another corporation or business organization, or other property, unless, in each case, the Corporation's stockholders of record immediately prior to such event shall (by virtue of the securities issued as a part of such event) hold at least 50% of the voting power of the surviving or acquiring Person immediately following such event.

(d) Liquidation Notice. The Corporation shall give written notice of any liquidation, dissolution, or winding up (or any transaction which might reasonably be deemed to be a liquidation, dissolution, or winding up pursuant to Section 2.2(c) of this Article Four) to each holder of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock not less than 20 days prior to the date stated in such notice for the distribution and payment of the amounts provided in this Section 2.2 of Article Four. Each holder of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock may convert all or any portion of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock into Common Stock pursuant to Section 2.5 of this Article Four at any time on or prior to the date fixed in such notice for distribution and payment or the date of a merger, consolidation, or sale of assets deemed to be a liquidation, dissolution, or winding up of the Corporation as described in Section 2.2(c) of this Article Four.

## **2.3 Redemption.**

(a) Right of Redemption. At any time after October 26, 2011, upon the written request of holders of at least 66 2/3% of the outstanding Series C Preferred Stock

(voting together as a single class, on an as-converted basis) (the "**Series C Redemption Request**"), the Corporation shall redeem the Series C Preferred Stock, from any source of funds legally available for such redemption. Such redemption shall occur in two equal annual installments (each, a "**Series C Redemption Date**"), with the first such Series C Redemption Date occurring on a date set by the Corporation, which shall be no more than 45 days after the receipt by the Corporation of the Series C Redemption Request, and the second such Series C Redemption Date occurring on the first anniversary of the first Series C Redemption Date; provided that any Series C Redemption Date may be set as an earlier date upon the mutual consent of the Corporation and the holders of at least seventy-five percent (75%) of the outstanding Series C Preferred Stock (voting together as a single class, on an as-converted basis). At any time after October 26, 2011 and after the redemption of the Series C Preferred Stock described above, upon the written request of holders of at least  $66\frac{2}{3}\%$  of the outstanding Series A Preferred Stock and Series B Preferred Stock (voting together as a single class, on an as-converted basis) (the "**Series A and Series B Redemption Request**"), the Corporation shall redeem the Series A Preferred Stock and Series B Preferred Stock, from any source of funds legally available for such redemption. Such redemption shall occur in two equal annual installments (each, a "**Series A and Series B Redemption Date**"), with the first such Redemption Date occurring on a date set by the Corporation, which shall be no more than 45 days after the receipt by the Corporation of the Redemption Request, and the second such Redemption Date occurring on the first anniversary of the first Redemption Date; provided that any Redemption Date may be set as an earlier date upon the mutual consent of the Corporation and the holders of at least  $66\frac{2}{3}\%$  of the outstanding Series A Preferred Stock and Series B Preferred Stock (voting together as a single class, on an as-converted basis). The Series A and Series B Redemption Request and the Series C Redemption Request are each referred to herein as a "**Redemption Request**" and the Series A and Series B Redemption Date and the Series C Redemption Date are each referred to herein as a "**Redemption Date**."

(b) Redemption Price. The Corporation shall effect each such redemption by paying cash for each share of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, equal to the greater of (i) the Liquidation Preference for such share on such Redemption Date and (ii) the Fair Market Value for such share on such Redemption Date (the "**Redemption Price**"). Any redemption effected pursuant to this Section 2.3(a) of Article Four shall be made on a pro rata basis among the holders of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock to be redeemed, as the case may be, in proportion to the number of shares of Common Stock into which the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, then held by each of them would be convertible.

(c) Redemption Notice. Not less than 15 nor more than 30 days prior to a Redemption Date, the Corporation shall give written notice by first class mail, postage prepaid, to each holder of record (as of the close of business on the business day next preceding the day on which notice is given) of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, to be redeemed, at the address of such holder last shown on the records of the Corporation, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder on such Redemption Date, the Redemption Date, the Redemption Price, and the place at which payment may be obtained and calling upon such holder to surrender to the Corporation in the manner and at the place

designated, its certificate or certificates representing the shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, to be redeemed on such Redemption Date (the "**Redemption Notice**"). On or after the Redemption Date, each holder of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, to be redeemed on such Redemption Date shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and upon the surrender of such certificate or certificates the Redemption Price of such shares shall be payable to the order of the Person whose name appears on such certificate or certificates as the owner of the certificate or certificates and each surrendered certificate shall be canceled.

(d) Available Funds, etc. From and after the Redemption Date, unless there shall have been a default in the timely payment of the Redemption Price, all rights (except the right to receive the applicable Redemption Price, upon surrender of a certificate or certificates) of the holders of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, designated for redemption in the Redemption Notice and redeemed on such Redemption Date shall cease with respect to such shares, and after the Redemption Date such shares shall not be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, on any Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, to be redeemed on such date, those funds that are legally available shall be used to redeem the maximum possible number of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, ratably among the holders of the shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, to be redeemed based upon the aggregate Redemption Price of such shares held by each such holder. The shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided in this Amended and Restated Certificate of Incorporation. At any time after such Redemption Date when additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, such funds shall immediately be used to redeem the balance of the shares that the Corporation has become obliged to redeem on any Redemption Date but that it has not redeemed, ratably among the holders of such shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, as the case may be, as set forth in the preceding sentence, and such funds shall not be used for any other purpose, including to redeem any shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, that the Corporation is obligated to redeem on any subsequent Redemption Date. If the Corporation fails to pay the full Redemption Price for all shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, to be redeemed on any Redemption Date, then, at the request of the holders of at least  $66\frac{2}{3}\%$  of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock (voting together as a single class, on an as-converted basis), the Board shall be increased by one and the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock (voting together as a single class, on an as-converted basis), shall have the right to elect such director. Such director shall have a number of votes equal to the number of votes the other



directors are entitled to cast, plus one. Following such election, the Board will initiate the sale of the Corporation.

(e) Deposit of Redemption Price. On or prior to the Redemption Date, the Corporation shall deposit the Redemption Price of all shares of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, to be redeemed with a bank or trust corporation having aggregate capital and surplus in excess of One Hundred Million Dollars (\$100,000,000.00) as a trust fund for the benefit of the respective holders of the shares designated for redemption, with irrevocable instructions and authority to the bank or trust corporation to pay the Redemption Price for such shares to their respective holders on or after the Redemption Date upon receipt of notification from the Corporation that such holder has surrendered his share certificate to the Corporation. As of the Redemption Date, the deposit shall constitute full payment of the shares to their holders, and from and after the Redemption Date the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders of such shares shall cease to be stockholders with respect to such shares and shall have no rights with respect to such shares except the rights to receive from the bank or trust corporation payment of the Redemption Price of the shares upon surrender of their certificates for such shares. Such instructions shall also provide that any moneys deposited by the Corporation pursuant to this Section 2.3(e) of Article Four for the redemption of shares after the Redemption Date converted into shares of the Corporation's Common Stock pursuant to Section 2.4 of this Article Four prior to the Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any moneys deposited by the Corporation pursuant to this Section 2.3(e) of Article Four remaining unclaimed at the expiration of two years following the Redemption Date shall, after such two-year period, be returned to the Corporation upon its request expressed in a resolution of the Board.

(f) Certificates, etc. Any shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock that are redeemed or otherwise acquired by the Corporation shall be canceled and shall constitute shares of Preferred Stock subject to designation by the Board as set forth in Section 1 of this Article Four. If fewer than the total number of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, shall be issued to the holder of such shares without cost to such holder within a reasonable time after surrender of the certificate representing the redeemed shares.

(g) Pro-Rata Redemptions. Neither the Corporation nor any Subsidiary shall redeem, purchase, or otherwise acquire any shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, except as expressly authorized in this Amended and Restated Certificate of Incorporation, in the Right of First Refusal and Co-Sale Agreement or pursuant to a purchase offer made (i) first, pro rata to all holders of shares of Series C Preferred Stock on the basis of the aggregate Redemption Price of such shares of Series C Preferred Stock owned by each such holder and (ii) second, to the extent any funds remain available for distribution, pro rata to all holders of shares of Series A Preferred Stock and Series B Preferred Stock on the basis of the aggregate Redemption Price of such shares of Series A Preferred Stock and Series B Preferred Stock owned by each such holder.

## 2.4 Voting Rights.

(a) General. The holders of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be entitled to vote with the holders of the Common Stock on all matters submitted to a vote of stockholders of the Corporation, except as otherwise provided in this Amended and Restated Certificate of Incorporation or in the DGCL. Each holder of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be entitled to the number of votes equal to the largest number of full shares of Common Stock into which all shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock held of record by such holder could then be converted pursuant to Section 2.5 of this Article Four at the record date for the determination of the stockholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is first executed. The holders of shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation (the "**Bylaws**").

(b) Preferred Stock Voting Rights. Without the affirmative vote of the holders of at least  $66\frac{2}{3}\%$  of the outstanding Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock (voting together as a single class, on an as-converted basis), the Corporation shall not:

(i) authorize or effect any sale, lease, assignment, transfer, exchange, or other conveyance of all or substantially all of the assets of the Corporation or any Subsidiary or, unless the obligations of the Corporation under an agreement are expressly conditional upon the requisite approval of the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock (voting together as a single class, on an as-converted basis), as provided for in this Amended and Restated Certificate of Incorporation, make any agreement or become obligated to do so;

(ii) authorize or effect any consolidation, conversion, or merger involving the Corporation or any share exchange, reclassification, or other change of any stock, or any recapitalization or, unless the obligations of the Corporation under an agreement are expressly conditional upon the requisite approval of the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock (voting together as a single class, on an as-converted basis), as provided for in this Amended and Restated Certificate of Incorporation, make any agreement or become obligated to do so;

(iii) authorize, issue, or obligate itself to issue any additional shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, or increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock;

(iv) authorize, issue, or obligate itself to issue (or reclassify any existing Equity Securities into) any Equity Securities ranking senior to or on a parity with the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock as to dividend or redemption rights, liquidation preferences, conversion rights, voting rights, or otherwise

(whether by merger, consolidation or otherwise); provided the holders of at least seventy-five percent (75%) of the outstanding Series C Preferred Stock also consent thereto;

(v) amend its Certificate of Incorporation or Bylaws in any manner, or otherwise alter or change the rights, preferences, or privileges of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock (whether by merger, consolidation or otherwise); provided the holders of at least seventy-five percent (75%) of the outstanding Series C Preferred Stock also consent thereto;

(vi) authorize or issue, or obligate itself to issue, any Equity Security of the Corporation to any employee, director, or consultant of the Corporation or any Subsidiary, or authorize or create, or reserve Equity Securities (including increasing the number of Equity Securities reserved) with respect to any stock option plan, stock incentive plan, stock appreciation right, or other plan or arrangement, other than up to 8,593,458 shares of Common Stock (as adjusted for any stock splits, stock dividends, recapitalizations, combinations, or similar transactions with respect to such shares after the filing date of this Amended and Restated Certificate of Incorporation) reserved for issuance under an Approved Plan;

(vii) voluntarily dissolve, liquidate, or wind up the affairs of the Corporation; or

(viii) agree to any exclusive license regarding, or the encumbrance of, a material portion of the Corporation's intellectual property.

## 2.5 Conversion

### (a) Conversion Procedure.

(i) Any holder of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock may convert all or any portion of the shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock (including any fraction of a share) held by such holder into a number of shares of Common Stock computed by multiplying the number of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, to be converted by the applicable Original Issue Price, and dividing the result by the applicable Conversion Price (as defined below) then in effect.

(ii) Each conversion of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing the shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, to be converted, together with properly executed conversion instructions or stock powers, have been surrendered for conversion at the principal office of the Corporation. At the time such conversion has been effected, the rights of the holder with respect to the converted shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, shall cease and the Person or Persons in whose name or names any certificate or certificates for shares of Common Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Common Stock represented by such certificate or certificates.

(iii) As soon as possible after a conversion has been effected (but in any event within three business days), the Corporation shall deliver to the converting holder:

1. a certificate or certificates representing the number of shares of Common Stock issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified;

2. a certificate representing any shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted; and

3. cash in lieu of any fractional share as provided in Section 2.5(a)(v) of this Article Four.

(iv) The issuance of certificates for shares of Common Stock upon conversion of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be made without charge to the holders of such shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, for any issuance tax in respect of such issuance or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Common Stock, other than any transfer taxes resulting from the transfer of converted shares to a Person or Persons other than the converting holder. Upon conversion of each share of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, the Corporation shall take all such actions as are necessary in order to insure that the Common Stock issuable with respect to such conversion shall be validly issued, fully paid, and nonassessable.

(v) If any fractional interest in a share of Common Stock would, except for the provisions of this Section 2.5(a)(v), be deliverable upon any conversion of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, the Corporation, in lieu of delivering such fractional share of Common Stock, shall pay an amount to the holder of such fractional interest equal to the Fair Market Value of such fractional interest as of the date of conversion. All shares of Common Stock issuable to a holder shall be aggregated for purposes of determining whether a fractional interest shall result from any conversion.

(vi) All declared but unpaid dividends on shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, to be converted shall be payable upon conversion of such shares in cash or, at the option of a majority of the Board, in shares of Common Stock having a Fair Market Value as of the date of conversion equal to the amount of such declared but unpaid dividends.

(b) Conversion Price.

(i) The "Series A Conversion Price" shall initially be the Series A Original Issue Price per share of Series A Preferred Stock. The "Series B Conversion Price" shall initially be the Series B Original Issue Price per share of Series B Preferred Stock. The "Series C Conversion Price" shall initially be the Series C Original Issue Price per share of

Series C Preferred Stock. The Series A Conversion Price, the Series B Conversion Price and the Series C Conversion Price are each referred to herein as a "Conversion Price." In order to prevent dilution of the conversion rights granted under this subdivision, each Conversion Price also shall be subject to adjustment from time to time pursuant to Section 2.5(b)(ii) of Article Four.

(ii) If and whenever, on or after the date of this Amended and Restated Certificate of Incorporation, the Corporation issues or sells, or is deemed to have issued or sold, any shares of its Common Stock for consideration per share less than (A) in the case of the Series A Preferred Stock and Series B Preferred Stock, the Series B Conversion Price in effect immediately prior to the time of such issue or sale or (B) in the case of the Series C Preferred Stock, the Series C Conversion Price in effect immediately prior to the time of such issue or sale, then immediately upon such issue or sale, the Series A Conversion Price, Series B Conversion Price or the Series C Conversion Price, as the case may be, shall be reduced to the price determined by multiplying such Conversion Price by a fraction:

1. the numerator of which shall be (x) the number of shares of Common Stock outstanding immediately prior to such issue or sale (assuming the exercise or conversion of all Options (as defined below) and Convertible Securities (as defined below) that are then exercisable or convertible, and assuming (without duplication) the issuance of all shares reserved for issuance pursuant to any Approved Plan), plus (y) the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of additional shares of Common Stock so issued or sold would purchase at such Conversion Price; and

2. the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue or sale (assuming the exercise or conversion of all Options and Convertible Securities that are then exercisable or convertible, and assuming (without duplication) the issuance of all shares reserved for issuance pursuant to any Approved Plan) plus the number of additional shares of Common Stock so issued.

(iii) Notwithstanding the foregoing, the Corporation shall not be required to make any adjustment to the Conversion Price by reason of the issuance of Common Stock when such issuance is (i) upon conversion of shares of Series A Preferred Stock, (ii) upon conversion of shares of Series B Preferred Stock, (iii) upon conversion of shares of Series C Preferred Stock, (iv) as a dividend or distribution on the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, (v) pursuant to any Approved Plan, (vi) in connection with an acquisition transaction, building or equipment lease transaction, bank loan transaction, or strategic alliance or partnering arrangement that is not primarily for equity financing purposes and that is approved by the Board (including at least one Purchaser Director), (vii) pursuant to a Purchase Agreement, or (viii) pursuant to warrants to purchase up to 368 shares of Common Stock or 64,528 shares of Series C Preferred Stock outstanding as of the date of this Amended and Restated Certificate of Incorporation.

(c) Effect on Conversion Price of Certain Events. For purposes of determining the adjusted Conversion Price under Section 2.5 of this Article Four, the following shall be applicable:

(i) If the Corporation in any manner issues or grants any options, warrants, or similar rights ("**Options**") to purchase or acquire Common Stock or Equity Securities convertible or exchangeable, with or without consideration, into or for Common Stock ("**Convertible Securities**") and the price per share for which Common Stock is issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities is less than the Conversion Price for any series of Preferred Stock in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. For purposes of this Section, the "price per share for which Common Stock is issuable" shall be determined by dividing (a) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the issuance or sale of such Convertible Securities and the conversion or exchange of such Convertible Securities, by (b) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options. No further adjustment of the Conversion Price shall be made when Convertible Securities are actually issued upon the exercise of such Options or when Common Stock is actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(ii) If the Corporation in any manner issues or sells any Convertible Securities and the price per share for which Common Stock is issuable upon such conversion or exchange is less than the Conversion Price for any series of Preferred Stock in effect immediately prior to the time of such issue or sale, then the maximum number of shares of Common Stock issuable upon conversion or exchange of such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. For the purposes of this Section, the "price per share for which Common Stock is issuable" shall be determined by dividing (a) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange of such Convertible Securities, by (b) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities. No further adjustment of the Conversion Price for such series of Preferred Stock shall be made when Common Stock is actually issued upon the conversion or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustments of the Conversion Price for such series of Preferred Stock had been or are to be made pursuant to other provisions of this Section 2.5 of Article Four, no further adjustment of the Conversion Price for such series of Preferred Stock shall be made by reason of such issue or sale.

(iii) If the purchase price provided for in any Options, the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock changes at any time, the Conversion Price for each series of Preferred Stock in effect at the time of such change shall be readjusted to the Conversion Price for such series of Preferred Stock which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration, or changed conversion rate, as the case may be, at the time initially granted, issued, or sold.

(iv) Upon the expiration of any Option or the termination of any right to convert or exchange any Convertible Security without the exercise of any such Option or right, the Conversion Price for each series of Preferred Stock then in effect under this Certificate shall be adjusted to the Conversion Price for such series of Preferred Stock which would have been in effect at the time of such expiration or termination had such Option or Convertible Security, to the extent outstanding immediately prior to such expiration or termination, never been issued.

(v) If any Common Stock, Option, or Convertible Security is issued or sold or deemed to have been issued or sold for cash, the consideration received for such Common Stock, Option, or Convertible Security shall be deemed to be the net amount received by the Corporation for such Common Stock, Option, or Convertible Security. In case any Common Stock, Options, or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be the Fair Market Value of such Common Stock, Options, or Convertible Securities as of the date of receipt. If any Common Stock, Option, or Convertible Security is issued in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration for such Common Stock, Option, or Convertible Security shall be deemed to be the Fair Market Value of such portion of the net assets and business of the non-surviving corporation as is attributable to such Common Stock, Options, or Convertible Securities, as the case may be.

(vi) In case any Option is issued in connection with the issue or sale of other securities of the Corporation, together comprising one integrated transaction in which no specific consideration is allocated to such Option by the parties to such transaction, the Option shall be deemed to have been issued for a consideration of \$0.001.

(vii) The number of shares of Common Stock outstanding at any given time does not include shares owned or held by or for the account of the Corporation or any Subsidiary, and the disposition of any shares so owned or held shall be considered an issue or sale of Common Stock.

(viii) If the Corporation takes a record of the holders of Common Stock for the purpose of entitling them (a) to receive a dividend or other distribution payable in Common Stock, Options, or Convertible Securities or (b) to subscribe for or purchase Common Stock, Options, or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or upon the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(d) Subdivision or Combination of Common Stock. If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization, or otherwise after the filing date of this Amended and Restated Certificate of Incorporation) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price for each series of Preferred Stock in effect immediately prior to such subdivision shall be proportionately reduced, and if the Corporation at any time combines (by reverse stock split or otherwise after the filing date of this Amended and Restated Certificate of Incorporation) its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price for each series of Preferred Stock in effect immediately prior to such combination shall be proportionately increased.

(e) Reorganization, Mergers, Consolidations, or Sales of Assets. Subject to Section 2.2(c) of this Article Four, if at any time or from time to time there shall be a capital reorganization of the Common Stock (other than a subdivision, combination, reclassification, or exchange of shares provided for elsewhere in this Section 2.5 of Article Four) or a merger or consolidation of the Corporation with or into another corporation, or the sale of all or substantially all of the Corporation's properties and assets to any other person, then, as a part of such reorganization, merger, consolidation, or sale, provision shall be made so that the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, after such reorganization, merger, consolidation, or sale, shall be entitled to receive upon conversion of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, the number of shares of stock or other securities or property of the Corporation (including cash), or of the successor corporation resulting from such merger or consolidation or sale, to which a holder of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, merger, consolidation, or sale. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 2.5 of Article Four with respect to the rights of the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock after the reorganization, merger, consolidation, or sale to the effect that the provisions of this Section 2.5 of Article Four (including adjustment of each Conversion Price and the number of shares purchasable upon conversion of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(f) Certain Events; No Impairment. If any event occurs of the type contemplated by the provisions of this Section 2.5 of Article Four but not expressly provided for by such provisions, then the Board shall make an appropriate adjustment in each Conversion Price so as to protect the rights of the holders of shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock; provided that no such adjustment shall increase any Conversion Price as otherwise determined pursuant to this Section 2.5 of Article Four or decrease the number of shares of Common Stock issuable upon conversion of each share of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock. The Corporation shall not avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Amended and Restated Certificate of Incorporation by the Corporation but shall at all times in good faith assist in the carrying out of all the provisions of this Section 2.5 of Article Four and in the taking of all actions that may be necessary or appropriate to protect the rights of the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock against impairment.



(g) Notices.

(i) Immediately upon any adjustment of a Conversion Price, the Corporation shall give written notice of such adjustment to all holders of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be.

(ii) The Corporation shall give written notice to all holders of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock at least 10 days prior to the date on which the Corporation closes its books or takes a record (a) with respect to any dividend or distribution upon Common Stock, (b) with respect to any pro rata subscription offer to holders of Common Stock, or (c) for determining rights to vote with respect to any matter referred to in Section 2.4(b) of this Article Four.

(h) Automatic Conversion. All of the outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be converted into Common Stock at the applicable Conversion Price then in effect without any further action on the part of the Corporation or any holder of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, upon the earlier of (i) immediately prior to the time of and subject to the closing and funding of a Qualified Public Offering or (ii) the date that a cumulative total of at least seventy-five percent (75%) of the shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock (voting together as a single class, on an as-converted basis) issued by the Corporation prior to such date (as adjusted for any stock splits, stock dividends, recapitalizations, combinations, and similar transactions with respect to such shares after the filing date of this Amended and Restated Certificate of Incorporation) have been converted into Common Stock pursuant to this Section 2.5 of Article Four or otherwise consent thereto.

(i) Other Distributions. In the event that the Corporation at any time or from time to time after the date of this Amended and Restated Certificate of Incorporation the Corporation declares a distribution payable in securities of other Persons, evidences of indebtedness issued by the Corporation or other Persons, or assets of the Corporation (excluding cash dividends), then in each such case for the purpose of this Section 2.5(i) of Article Four, the holders of the 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 the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(j) 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 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 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 Preferred Stock, in addition to such other remedies as shall be available to the holder of such Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, the Corporation shall take such corporate action as may be necessary, in the reasonable opinion of its counsel, 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, using its best efforts to obtain the requisite stockholder approval of any necessary amendment to this Amended and Restated Certificate of Incorporation. The Corporation shall also use its best efforts to take all such actions as may be necessary to ensure that all shares of Common Stock issuable upon conversion of the Preferred Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any securities exchange or quotation system upon which shares of Common Stock may be listed or quoted, as the case may be.

(k) Waiver of Adjustment to 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 or in a particular instance, by the consent or vote of the holders of at least 66-2/3% of the outstanding shares of such series of Preferred Stock. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

**2.6 Registration of Transfer.** The Corporation shall keep at its principal office a register for the registration of shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock. Upon the surrender of any certificate representing shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange for such surrendered certificate representing in the aggregate the number of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and dividends shall accrue on the shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, represented by such new certificate from the date to which dividends have been fully paid on such shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, represented by the surrendered certificate.

**2.7 Replacement.** Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit without bond of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction, or mutilation of any certificate evidencing shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock and, in the case of any such loss, theft, or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation or, in the case of any mutilation, upon surrender of such certificate the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, represented by such lost, stolen, destroyed, or mutilated certificate, and dividends shall accrue on the shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed, or mutilated certificate.

## 2.8 Definitions.

**"Approved Plan"** means the 2002 Stock Option/Stock Issuance Plan, any other written stock option, stock purchase, stock incentive, or stock appreciation plan or arrangement and any increase in the number of shares of Equity Securities reserved for issuance pursuant to any of the foregoing; provided that such plan or arrangement is approved by a majority of the Board (including at least one Purchaser Director) and, if necessary, by the holders of at least 66<sup>2</sup>/<sub>3</sub>% of the outstanding Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock (voting together as a single class, on an as-converted basis) pursuant to Section 2.4(b)(vi) of this Article Four.

**"Equity Security"** means any stock or similar security, including, without limitation, securities containing equity features and securities containing profit participation features, or any security convertible or exchangeable, with or without consideration, into or for any stock or similar security, or any security carrying any warrant or right to subscribe for or purchase any stock or similar security, or any such warrant or right.

**"Fair Market Value"** means the fair market value as determined in good faith by a majority of the entire Board (including at least one Purchaser Director).

**"Person"** means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or other entity or a governmental entity or any department, agency, or political subdivision of any such entity.

**"Purchase Agreement"** means the Series C Preferred Stock Purchase Agreement, dated as of October 26, 2006, by and among the Corporation and certain investors, as such agreement may from time to time be amended in accordance with its terms, the Series C Preferred Stock Purchase Agreement, dated May 10, 2006, by and among the Corporation and certain investors, as such agreement may from time to time be amended in accordance with its terms, or the Series C Preferred Stock Purchase Agreement, dated as of December 21, 2004, by and among the Corporation and certain investors, as such agreement may from time to time be amended in accordance with its terms.

**"Purchaser Director"** means any director designated by the holders of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock pursuant to the Amended and Restated Voting Agreement, dated as of October 26, 2006, by and among the Corporation and certain stockholders of this Corporation, as such agreement may from time to time be amended in accordance with its terms.

**"Qualified Public Offering"** means any firm commitment underwritten offering by the Corporation of shares of Common Stock to the public pursuant to an effective registration statement under the Securities Act of 1933, then in effect, or any comparable statement under any similar federal statute then in force, in which (i) the aggregate cash proceeds to be received by the Corporation from such offering (without deducting underwriting discounts, expenses, and commissions) are at least \$25,000,000 and (ii) the price per share paid by the public for such shares is at least three times the Series C Original Issue Price.

**"Right of First Refusal and Co-Sale Agreement"** means the Amended and Restated Right of First Refusal and Co-Sale Agreement, dated as of December 21, 2004, by and among the Corporation and certain stockholders of the Corporation, as such agreement may from time to time be amended in accordance with its terms.

**"Subsidiary"** means any corporation more than 50% of the outstanding voting securities of which are owned by the Corporation or any Subsidiary, directly or indirectly, or a partnership or limited liability company in which the Corporation or any Subsidiary is a general partner or manager or holds interests entitling it to receive more than 50% of the profits or losses of the partnership or limited liability company.

**2.9 Amendment and Waiver.** Except as expressly provided in this Amended and Restated Certificate of Incorporation or the DGCL, no amendment, modification, or waiver shall be binding or effective with respect to any provision of this Section 2 of Article Four without the affirmative vote of the holders of at least  $66\frac{2}{3}\%$  of the shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock then outstanding (voting together as a single class, on an as-converted basis); provided that if any such amendment, modification, or waiver is to a provision in this Amended and Restated Certificate of Incorporation that requires a specific vote pursuant to Section 242(b)(2) of the DGCL or otherwise (such as requiring the vote of a specified percentage of a particular class of voting securities) to take an action under such provision or to take an action with respect to the matters described in such provision, such amendment, modification, or waiver shall not be binding or effective unless such specific vote is obtained to approve such amendment, modification, or waiver; and provided further that no change in the terms of this Amended and Restated Certificate of Incorporation may be accomplished by merger or consolidation of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders of the applicable percentage of the applicable class(es) of securities that would be necessary to approve such change in terms other than in connection with such merger or consolidation.

**2.10 Notices.** Except as otherwise expressly provided, all notices referred to in this Amended and Restated Certificate of Incorporation shall be in writing and shall be delivered personally or mailed, certified mail, return receipt requested, or delivered by overnight courier service to (i) the Corporation, at its principal executive offices and (ii) any stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated in writing by any such holder), and shall be deemed to have been given upon delivery, if delivered personally, three business days after mailing, if mailed, or one business day after delivery to the courier, if delivered by overnight courier service.

### **Section 3.     RIGHTS AND PREFERENCES OF THE COMMON STOCK.**

**3.1     Priority.** All voting powers, preferences, relative participation, optional, or other special rights and privileges and qualifications, limitations, or restrictions of the Common Stock are expressly made subject and subordinate to those that may be fixed with respect to any shares of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock.

**3.2     Voting Rights.** Except as otherwise required by law or this Amended and Restated Certificate of Incorporation, each holder of Common Stock shall have one vote in respect of each share of stock held by such stockholder of record on the books of the Corporation for the election of directors and on all matters submitted to a vote of the stockholders of the Corporation. Except as may be otherwise provided in this Amended and Restated Certificate of Incorporation or by law, the Common Stock shall vote together with all other classes and series of stock of the Corporation (including the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock) as a single class on all actions to be taken by the stockholders of the Corporation. Subject to Section 2.4(b) of Article Four, 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 or reserved for the exercise of options or warrants or conversion of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock) by the affirmative vote of the holders of a majority of the capital stock of the Corporation entitled to vote (voting together as a single class, on an as-converted basis), irrespective of the provisions of Section 242(b)(2) of the DGCL.

**3.3     Dividends.** Subject to the preferential rights of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, the holders of shares of Common Stock shall be entitled to receive, when, as, and if declared by the Board, out of the assets of the Corporation which are by law available for payment of dividends, dividends payable either in cash, in property, or in shares of capital stock.

### **ARTICLE FIVE**

The business and affairs of the Corporation shall be managed by and under the direction of the Board. The exact number of directors of the Corporation shall be fixed by or in the manner provided in the Bylaws.

### **ARTICLE SIX**

Except as otherwise provided in this Amended and Restated Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board is expressly authorized to adopt, amend or repeal in any respect any or all of the Bylaws.

### **ARTICLE SEVEN**

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

### **ARTICLE EIGHT**

Meetings of stockholders of the Corporation 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 of applicable law) outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the Bylaws.

#### **ARTICLE NINE**

A director of this Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided in this Amended and Restated Certificate of Incorporation, shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended. No amendment to or repeal of this Article Nine shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

#### **ARTICLE TEN**

To the fullest extent permitted by applicable law, the Corporation is also authorized to provide indemnification of (and advancement of expenses to) its agents (and any other persons to which Delaware law permits this Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors, or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the DGCL, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to this Corporation, its stockholders, and others. Any repeal or modification of any of the foregoing provisions of this Article Ten shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of this Corporation with respect to any acts or omissions of such director, officer, or agent occurring prior to, such repeal or modification.

#### **ARTICLE ELEVEN**

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 applicable laws, and all rights conferred upon stockholders in this Amended and Restated Certificate of Incorporation are granted subject to this reservation.

The undersigned, being the duly elected President and Chief Executive Officer of the Corporation, has executed this Amended and Restated Certificate of Incorporation on this 26<sup>th</sup> day of October, 2006.

/s/ Scott Harmon

Scott Harmon

President and Chief Executive Officer