

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION**

OF

AKIMBO SYSTEMS, INC.

The undersigned, Thomas Frank and Peter Chantel, hereby certify that:

1. They are the duly elected and acting Chief Executive Officer and Chief Financial Officer, respectively, of Akimbo Systems, Inc., a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on June 7, 2004.
3. The Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

ARTICLE I

The name of this corporation is Akimbo Systems, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 615 South DuPont Highway, City of Dover, County of Kent, 19901. The name of its registered agent at such address is National Corporate Research, Ltd.

ARTICLE III

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

ARTICLE IV

(A) **Classes of Stock.** The Corporation is authorized to issue two classes of shares to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that the Corporation is authorized to issue is Fifty-Eight Million Eight Hundred Thirty Two Thousand Thirty Three (58,832,033), with a par value of \$0.0001, Thirty Five Million (35,000,000) shares which shall be Common Stock (the "Common Stock"), and Twenty Three Million Eight Hundred Thirty-Two Thousand Thirty-Three (23,832,033) shares of which shall be Preferred Stock.

Upon the effectiveness of this Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware, (i) each ten (10) outstanding shares of this corporation's Common Stock shall be combined, reclassified and changed into one (1) share of

Common Stock, without any action by the holder thereof; (ii) each ten (10) outstanding shares of this corporation's Series A-1 Preferred Stock (as defined below) shall be combined, reclassified and changed into one (1) share of this corporation's Series A-1 Preferred Stock, without any action by the holder thereof; (iii) each ten (10) outstanding shares of this corporation's Series A-2 Preferred Stock (as defined below) shall be combined, reclassified and changed into one (1) share of this corporation's Series A-2 Preferred Stock, without any action by the holder thereof; (iv) each ten (10) outstanding shares of this corporation's Series A-3 Preferred Stock (as defined below) shall be combined, reclassified and changed into one (1) share of this corporation's Series A-3 Preferred Stock, without any action by the holder thereof; (v) each ten (10) outstanding shares of this corporation's Series B Preferred Stock (as defined below) shall be combined, reclassified and changed into one (1) share of this corporation's Series B Preferred Stock, without any action by the holder thereof; and (vi) each ten (10) outstanding shares of this corporation's Series C Preferred Stock (as defined below) shall be combined, reclassified and changed into one (1) share of this corporation's Series C Preferred Stock, without any action by the holder thereof (collectively, the "Reverse Split"). No fractional shares of any share or shares of the Common Stock or Preferred Stock shall be issued upon the Reverse Split. Whether or not fractional shares would have been issuable upon the Reverse Split (but for the preceding sentence) shall be determined on a class-by-class and series-by-series basis based on the total number of shares of Common Stock and Preferred Stock held by each holder. In lieu of any fractional interests in shares of Common Stock or Preferred Stock to which any stockholder would otherwise be entitled pursuant hereto, such stockholder shall be entitled to receive a cash payment equal to the amount determined by the Board of Directors to be the fair value of such a share multiplied by such fraction. All numbers in this Amended and Restated Certificate of Incorporation (including those relating to the rights, preferences and privileges of the Preferred Stock) have been adjusted for the Reverse Split.

(B) **Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock authorized by this Amended and Restated Certificate of Incorporation may be issued from time to time in one or more series. Three Thousand Four Hundred Seventeen (3,417) of the authorized shares of Preferred Stock are hereby designated "Series A-1 Preferred Stock" (the "Series A-1 Preferred"). Five Hundred One Thousand Seven Hundred Eight (501,708) of the authorized shares of Preferred Stock are hereby designated "Series A-2 Preferred Stock" (the "Series A-2 Preferred"). Six Hundred Sixty Nine Thousand Six Hundred Sixty One (669,661) of the authorized shares of Preferred Stock are hereby designated "Series A-3 Preferred Stock" ("Series A-3 Preferred"). Nine Hundred Thirty Seven Thousand Two Hundred Forty Seven (937,247) of the authorized shares of Preferred Stock are hereby designated "Series B Preferred Stock" (the "Series B Preferred"). One Million Three Hundred Twenty Thousand (1,320,000) of the authorized shares of Preferred Stock are hereby designated "Series C Preferred Stock" (the "Series C Preferred"). Three Million Four Hundred Thousand (3,400,000) of the authorized shares of Preferred Stock are hereby designated "Series 1 Preferred Stock" ("Series 1 Preferred"). Seventeen Million (17,000,000) of the authorized shares of Preferred Stock are hereby designated "Series 2 Preferred Stock" ("Series 2 Preferred"). The Series A-1 Preferred, Series A-2 Preferred, Series A-3 Preferred, Series B Preferred, Series C Preferred Stock, Series 1 Preferred Stock and the Series 2 Preferred are hereinafter collectively referred to as the "Preferred Stock."

The rights, preferences, privileges, and restrictions granted to and imposed on the Preferred Stock are as set forth below in this Article IV(B).

1. **Dividend Provisions.**

(a) Each holder of shares of Preferred Stock, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) to the holders of any Common Stock, shall be entitled to receive, when, if and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of (i) \$0.038 per annum (as adjusted for any stock dividends, combinations or splits with respect to such shares) on each outstanding share of Series 2 Preferred, (ii) \$0.24 per annum (as adjusted for any stock dividends, combinations or splits with respect to such shares) on each outstanding share of Series 1 Preferred, (iii) \$0.774 per annum (as adjusted for any stock dividends, combinations or splits with respect to such shares) on each outstanding share of Series C Preferred, (iv) \$0.768 per share per annum (as adjusted for any stock dividends, combinations or splits with respect to such shares) on each outstanding share of Series B Preferred, (v) \$0.762 per share per annum (as adjusted for any stock dividends, combinations or splits with respect to such shares) on each outstanding share of Series A-3 Preferred, (vi) \$0.675 per share per annum (as adjusted for any stock dividends, combinations or splits with respect to such shares) on each outstanding share of Series A-2 Preferred and (vii) \$0.66 per share per annum (as adjusted for any stock dividends, combinations or splits with respect to such shares) on each outstanding share of Series A-1 Preferred. Such dividends shall be non-cumulative and no right to any such dividend shall accrue unless specifically declared by the Board of Directors.

(b) So long as any shares of Preferred Stock shall be outstanding, no declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) shall be paid or declared, nor shall any other distribution be made, on the Common Stock, nor shall any shares of Common Stock be purchased, redeemed, or otherwise acquired for value by the Corporation (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer) until all dividends (set forth in Article IV(B)(1)(a) above) on the Preferred Stock shall have been paid or declared and set apart. If dividends are paid on any share of Common Stock, an additional dividend shall be paid with respect to all outstanding shares of Preferred Stock in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

2. **Liquidation Preference.** In the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary, the assets and funds of the Corporation shall be distributed as follows:

(a) The holders of Series 2 Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of the

Series A-1 Preferred, Series A-2 Preferred, Series A-3 Preferred, Series B Preferred, Series C Preferred, Series 1 Preferred or Common Stock, or any other stock junior to the Series 2 Preferred, by reason of their ownership thereof, an amount per share equal to \$0.9514 for each outstanding share of Series 2 Preferred (as adjusted for any stock dividends, combinations or splits with respect to such shares), plus all accrued but unpaid dividends thereon, if any. If the assets and funds thus distributed among the holders of Series 2 Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of Series 2 Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive with respect to such shares.

(b) Following payment of the full amounts due pursuant to Section 2(a) of this Article IV(B), the holders of Series 1 Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Series A-1 Preferred, Series A-2 Preferred, Series A-3 Preferred, Series B Preferred, Series C Preferred or Common Stock, or any other stock junior to the Series 1 Preferred, by reason of their ownership thereof, an amount per share equal to \$3.00 for each outstanding share of Series 1 Preferred (as adjusted for any stock dividends, combinations or splits with respect to such shares), plus all accrued but unpaid dividends thereon, if any. If the assets and funds thus distributed among the holders of Series 1 Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution following payment of the full amounts due pursuant to Section 2(a) of this Article IV(B) shall be distributed ratably among the holders of Series 1 Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive with respect to such shares.

(c) Following payment of the full amounts due pursuant to Sections 2(a) and 2(b) of this Article IV(B), the holders of Series C Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Series A-1 Preferred, Series A-2 Preferred, Series A-3 Preferred, Series B Preferred or Common Stock, or any other stock junior to the Series C Preferred, by reason of their ownership thereof, an amount per share equal to \$12.90 for each outstanding share of Series C Preferred (as adjusted for any stock dividends, combinations or splits with respect to such shares), plus all accrued but unpaid dividends thereon, if any. If the assets and funds thus distributed among the holders of Series C Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution following payment of the full amounts due pursuant to Sections 2(a) and 2(b) of this Article IV(B) shall be distributed ratably among the holders of Series C Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive with respect to such shares.

(d) Following payment of the full amounts due pursuant to Sections 2(a), 2(b) and 2(c) of this Article IV(B), the holders of Series B Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Series A-1 Preferred, Series A-2 Preferred, Series A-3 Preferred or Common

Stock, or any other stock junior to the Series B Preferred, by reason of their ownership thereof, an amount per share equal to \$12.80 for each outstanding share of Series B Preferred (as adjusted for any stock dividends, combinations or splits with respect to such shares), plus all accrued but unpaid dividends thereon, if any. If the assets and funds thus distributed among the holders of Series B Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution following payment of the full amounts due pursuant to Sections 2(a), 2(b) and 2(c) of this Article IV(B) shall be distributed ratably among the holders of Series B Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive with respect to such shares.

(e) Following payment of the full amounts due pursuant to Sections 2(a), 2(b), 2(c) and 2(d) of this Article IV(B), the holders of Series A-1 Preferred, Series A-2 Preferred and Series A-3 Preferred shall be entitled to receive, pari passu among such holders, prior and in preference to any distribution of any of the assets of the Corporation to the holders of any Common Stock by reason of their ownership thereof, an amount per share equal to (i) \$12.70 for each outstanding share of Series A-3 Preferred (as adjusted for any stock dividends, combinations or splits with respect to such shares) (ii) \$11.26275 for each outstanding share of Series A-2 Preferred (as adjusted for any stock dividends, combinations or splits with respect to such shares) and (iii) \$11.00 for each outstanding share of Series A-1 Preferred (as adjusted for any stock dividends, combinations or splits with respect to such shares), plus all accrued but unpaid dividends thereon, if any. If the assets and funds thus distributed among the holders of Series A-1 Preferred, Series A-2 Preferred and Series A-3 Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution following payment of the full amounts due pursuant to Sections 2(a), 2(b), 2(c) and 2(d) of this Article IV(B) shall be distributed ratably among the holders of Series A-1 Preferred, Series A-2 Preferred and Series A-3 Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive with respect to such shares.

(f) Upon the completion of the distributions required by subparagraphs (a), (b), (c), (d) and (e) of this Article IV(B)(2), any remaining assets of the Corporation available for distribution shall be distributed among the holders of Series 2 Preferred, Series 1 Preferred and Common Stock pro rata, according to the number of outstanding shares of Common Stock held by each holder thereof (assuming full conversion of all such Series 2 Preferred and Series 1 Preferred).

(g) Each of the following transactions shall be deemed to be a liquidation, dissolution or winding up of the Corporation as those terms are used in this Article IV(B)(2): (a) any reorganization, consolidation, merger or similar transaction or similar series of related transactions (each, a "Combination Transaction") in which the Corporation is a constituent corporation or is a party if, as a result of such Combination Transaction, the voting securities of the Corporation that are outstanding immediately prior to the consummation of such Combination Transaction (other than any such securities that are held by an "Acquiring Shareholder", as defined below) do not represent, or are not converted into, securities of the

surviving corporation of such Combination Transaction (or such surviving corporation's parent corporation if the surviving corporation is owned by the parent corporation) that, immediately after the consummation of such Combination Transaction, together possess at least a majority of the total voting power of all securities of such surviving corporation (or its parent corporation, if applicable) that are outstanding immediately after the consummation of such Combination Transaction, including securities of such surviving corporation (or its parent corporation, if applicable) that are held by the Acquiring Shareholder; or (b) a sale or exclusive license of all or substantially all of the assets of the Corporation; provided, however, that an equity financing for cash raising purposes in which the Corporation is the surviving corporation shall not be considered a Combination Transaction. For purposes of this Article IV(B)(2), an "Acquiring Shareholder" means a stockholder or stockholders of the Corporation that (i) merges or combines with the Corporation in such Combination Transaction or (ii) owns or controls a majority of another corporation that merges or combines with the Corporation in such Combination Transaction.

(h) In any of such events, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability:

- (A) If traded on a securities exchange or through NASDAQ-NMS, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty (30) day period ending three (3) days prior to the closing;
- (B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and
- (C) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of a majority of the Series 2 Preferred.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (i) (A), (B) or (C) to reflect the approximate fair market value thereof, as mutually determined by the Corporation and the holders of a majority of the Series 2 Preferred.

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

(a) **Right to Convert.** Subject to and in compliance with the provisions of this Article IV(B)(3), any shares of Preferred Stock may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Preferred Stock shall be entitled upon conversion shall be the product obtained by multiplying the applicable Conversion Rate then in effect (determined as provided in Article IV(B)(3)(b)) by the number of shares of Preferred Stock being converted.

(b) **Conversion Rate.** The conversion rate in effect at any time for conversion of the Series A-1 Preferred (the "Series A-1 Conversion Rate") shall be the quotient obtained by dividing \$11.00 by the Series A-1 Conversion Price, calculated as provided in Article IV(B)(3)(c). The conversion rate in effect at any time for conversion of the Series A-2 Preferred (the "Series A-2 Conversion Rate") shall be the quotient obtained by dividing \$11.26275 by the Series A-2 Conversion Price, calculated as provided in Article IV(B)(3)(c). The conversion rate in effect at any time for conversion of the Series A-3 Preferred (the "Series A-3 Conversion Rate") shall be the quotient obtained by dividing \$12.70 by the Series A-3 Conversion Price, calculated as provided in Article IV(B)(3)(c). The conversion rate in effect at any time for conversion of the Series B Preferred (the "Series B Conversion Rate") shall be the quotient obtained by dividing \$12.80 by the Series B Conversion Price, calculated as provided in Article IV(B)(3)(c). The conversion rate in effect at any time for conversion of the Series C Preferred (the "Series C Conversion Rate") shall be the quotient obtained by dividing \$12.90 by the Series C Conversion Price, calculated as provided in Article IV(B)(3)(c). The conversion rate in effect at any time for conversion of the Series 1 Preferred (the "Series 1 Conversion Rate") shall be the quotient obtained by dividing \$0.4757 by the Series 1 Conversion Price, calculated as provided in Article IV(B)(3)(c). The conversion rate in effect at any time for conversion of the Series 2 Preferred (the "Series 2 Conversion Rate") shall be the quotient obtained by dividing \$0.4757 by the Series 2 Conversion Price, calculated as provided in Article IV(B)(3)(c). The Series A-1 Conversion Rate, Series A-2 Conversion Rate, Series A-3 Conversion Rate, Series B Conversion Rate, Series C Conversion Rate, Series 1 Conversion Rate and Series 2 Conversion Rate shall collectively be referred to herein as the "Conversion Rates."

(c) **Conversion Price.** As of the date hereof, the Series A-1 Conversion Price shall initially be \$11.00. Such initial Series A-1 Conversion Price shall be adjusted from time to time in accordance with this Article IV(B)(3). All references to the Series A-1 Conversion Price herein shall mean the Series A-1 Conversion Price as so adjusted. As of the date hereof, the Series A-2 Conversion Price shall initially be \$11.26275. Such initial Series A-2 Conversion Price shall be adjusted from time to time in accordance with this Article IV(B)(3). All references to the Series A-2 Conversion Price herein shall mean the Series A-2 Conversion Price as so adjusted. As of the date hereof, the Series A-3 Conversion Price shall initially be \$12.70. Such initial Series A-3 Conversion Price shall be adjusted from time to time in accordance with this Article IV(B)(3). All references to the Series A-3 Conversion Price herein shall mean the Series A-3 Conversion price as so adjusted. As of the date hereof, the

Series B Conversion Price shall initially be \$12.80. Such initial Series B Conversion Price shall be adjusted from time to time in accordance with this Article IV(B)(3). All references to the Series B Conversion Price herein shall mean the Series B Conversion Price as so adjusted. As of the date hereof, the Series C Conversion Price shall initially be \$12.90. Such initial Series C Conversion Price shall be adjusted from time to time in accordance with this Article IV(B)(3). All references to the Series C Conversion Price herein shall mean the Series C Conversion Price as so adjusted. As of the date hereof, the Series 1 Conversion Price shall initially be \$0.4757. Such initial Series 1 Conversion Price shall be adjusted from time to time in accordance with this Article IV(B)(3). All references to the Series 1 Conversion Price herein shall mean the Series 1 Conversion Price as so adjusted. As of the date hereof, the Series 2 Conversion Price shall initially be \$0.4757. Such initial Series 2 Conversion Price shall be adjusted from time to time in accordance with this Article IV(B)(3). All references to the Series 2 Conversion Price herein shall mean the Series 2 Conversion Price as so adjusted. The Series A-1 Conversion Price, the Series A-2 Conversion Price, the Series A-3 Conversion Price, the Series B Conversion Price, Series C Conversion Price, Series 1 Conversion Price and the Series 2 Conversion Price shall collectively be referred to as the "Conversion Price," and each a "Conversion Price."

(d) Automatic Conversion.

(i) Each outstanding share of Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series B Preferred Stock and Series C Preferred Stock (collectively, the "Special Mandatory Conversion Stock"), including those shares issuable upon the exercise of then outstanding warrants or other stock purchase rights, shall automatically, and without any further action on the part of such holder, be converted into shares of Common Stock at the applicable Conversion Price at the time in effect for such series of Preferred Stock at 12:01 a.m. (Eastern Standard Time) on the third (3rd) business day following the Accredited Investor Closing (as defined in that certain Series 2 Preferred Stock Purchase Agreement (the "Series 2 Purchase Agreement") entered into by the Company and certain third parties on or around the Filing Date, a copy of which will be provided to each stockholder of the corporation upon written request therefor). Upon such conversion, any shares of Special Mandatory Conversion Stock so converted shall be cancelled and not subject to reissuance. Upon a the conversion described in this Article IV(B)(3)(d)(i) , each holder of shares of Special Mandatory Conversion Stock converted pursuant to this Article IV(B)(3)(d)(i) above shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in a notice to be provided to such holders, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Article IV(B)(3)(d)(i) . All rights with respect to the Special Mandatory Conversion Stock converted pursuant to Article IV(B)(3)(d)(i) , including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Special Mandatory Conversion Stock has been converted, and payment of any declared but unpaid dividends thereon. 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 conversion described in this Article IV(B)(3)(d)(i) and the surrender of the certificate or certificates for the Special Mandatory Conversion Stock, the Corporation shall cause to be issued and delivered to such holder, or on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion. All certificates evidencing shares of Special Mandatory Conversion Stock cancelled, and the shares of Special Mandatory Conversion Stock converted pursuant to this Article IV(B)(3)(d)(i) represented thereby shall, from and after the time of the conversion, be deemed to have been converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. 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 Special Mandatory Conversion Stock accordingly.

(ii) Each share of Series 1 Preferred and Series 2 Preferred shall be automatically converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (i) except as provided in Article IV(B)(3)(e) below, the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended, the aggregate public offering price of which is not less than \$25,000,000 at a price per share not less than \$5.00 (as adjusted for any stock splits, stock dividends, recapitalizations or the like) (a "Qualified IPO") or (ii) the date specified by written consent of the holders of a majority of then outstanding Series 2 Preferred.

(e) Mechanics of Conversion. For the purposes of Article IV(B)(3)(d)(ii), before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at its principal corporate office of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. 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 as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(f) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of any series of the Series 1 Preferred and Series 2 Preferred shall be subject to adjustment, as applicable, from time to time as follows:

(i) (A) If the Corporation shall issue, after the filing date of this Amended and Restated Certificate of Incorporation (the "Filing Date") any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for Series 2 Preferred in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for the Series 2 Preferred in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying such Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term Outstanding Common shall include shares of Common Stock deemed issued pursuant to Article IV(B)(3)(f)(i)(E) below.

(B) No adjustment of the Conversion Price for any series of Series 2 Preferred shall be made in an amount less than one tenth of one cent (\$0.001) per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections (E)(3) and (E)(4) below, no adjustment of such Conversion Price pursuant to this Article IV(B)(3)(f)(i) shall have the effect of increasing such Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(E) In the case of the issuance (whether before, on or after the Filing Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Article IV(B)(3)(f)(i) and Article IV(B)(3)(f)(ii):

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

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Article IV(B)(3)(f)(i)(C) and (f)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of Series 2 Preferred, if and to the extent in any way such Series 2 Preferred is affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the

Conversion Price of the Series 2 Preferred, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

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

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Article IV(B)(3)(f)(i)(E)) by the Corporation after the Filing Date other than:

(A) Common Stock issued pursuant to a transaction described in Article IV(B)(3)(f)(iii) hereof;

(B) shares of Common Stock issuable or issued to employees, consultants or directors (if in transactions with primarily non-financing purposes) of the Corporation directly or pursuant to a stock option plan, equity incentive plan or restricted stock plan approved by the Board of Directors;

(C) shares of Common Stock issued or issuable (1) in a public offering or (2) upon exercise of warrants or rights granted to underwriters in connection with such a public offering;

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

(E) shares of Common Stock issued to financial institutions, equipment lessors, brokers or similar persons in connection with commercial credit arrangements, equipment financings, commercial property lease transactions or similar transactions unanimously approved by the Board of Directors;

(F) shares of Common Stock issued in connection with a bona fide acquisition, merger or similar transaction the terms of which are unanimously approved by the Board of Directors;

(G) shares of Common Stock or Preferred Stock issued upon exercise of warrants outstanding as of the Filing Date;

(H) shares of Common Stock or Preferred Stock issued in connection with the merger of the Corporation effected solely for the purpose of reincorporation; and

(I) shares of Common Stock excluded from the definition of Additional Stock by the affirmative written consent of the holders of a majority of the Series 2 Preferred Stock.

(iii) In the event the Corporation should at any time or from time to time after the Filing Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Preferred Stock shall be increased in proportion to such increase, with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Article IV(B)(3)(f)(i)(E).

(iv) If the number of shares of Common Stock outstanding at any time after the Filing Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for each series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(g) Other Distributions. Subject to any applicable restrictions in Article IV(B)(1), in the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Article IV(B)(3)(f)(iii), then, in each such case for the purpose of this Article IV(B)(3)(g), the holders of 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.

(h) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Article IV(B)(3) or Article IV(B)(2)), provision shall be made so that the holders of Preferred Stock shall thereafter be entitled to

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

(i) Reorganizations, Mergers and Consolidations. If at any time or from time to time after the Filing Date there is a reorganization of the Corporation (other than a recapitalization, subdivision, combination, reclassification or exchange of shares provided for in Article IV(B)(3)(h)) or a merger or consolidation of the Corporation with or into another corporation (except an event that is governed under Article IV(B)(2)(d)), then, as a part of such reorganization, merger or consolidation, provision shall be made so that the holders of the Preferred Stock thereafter shall be entitled to receive, upon conversion of the Preferred Stock, the number of shares of stock or other securities or property of the Corporation, or of such successor corporation resulting from such reorganization, merger or consolidation, to which a holder of Common Stock deliverable upon conversion would have been entitled on such reorganization, merger or consolidation. In any such case, appropriate adjustment shall be made in the application of the provisions of this IV(B)(3)(i) with respect to the rights of the holders of the Preferred Stock after the reorganization, merger or consolidation to the end that the provisions of this Article IV(B)(3)(i) (including adjustment of the Conversion Prices then in effect and number of shares issuable upon conversion of the Preferred Stock) shall be applicable after that event and be as nearly equivalent to the provisions hereof as may be practicable. This Article IV (B)(3)(i) shall similarly apply to successive reorganizations, mergers and consolidations.

(j) Reserved.

(k) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Article IV(B)(3) and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Series A-1 Preferred, Series A-2 Preferred, Series A-3 Preferred, Series B Preferred, Series C Preferred, Series 1 Preferred and Series 2 Preferred against impairment. Notwithstanding the foregoing, nothing in this Article IV(B)(iii)(k) shall prohibit the Corporation from amending its Certificate of Incorporation with the requisite consent of its stockholders and the Board of Directors.

(l) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of Preferred Stock into shares of Common Stock pursuant to this Article IV(B)(3). If more than one (1) certificate shall be surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares so surrendered. Each holder of shares of Preferred Stock converted into Common Stock who would otherwise be entitled to a fraction of a share of Common Stock shall receive cash (rounded to the nearest whole cent) equal to the fair market value of a share of Common Stock as determined (in good faith) by the Board of Directors multiplied by such fractional interest.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Preferred Stock pursuant to this Article IV(B)(3), the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of 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 (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Preferred Stock.

(m) Notices of Record Date. In the event of: (i) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right; (ii) any amendment of this Certificate of Incorporation; or (iii) any event deemed a liquidation pursuant to Section IV(B)(2) of this Certificate of Incorporation, the Corporation shall mail to each stockholder who, together with its affiliates, holds at least 500,000 shares of Preferred Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares), at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record of holders or action is to be taken for the purpose of such dividend, distribution, right, liquidation or amendment, and, if applicable, the amount and/or character of such dividend, distribution, right, liquidation or amendment.

(n) 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 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 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 purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation.

(o) Notices. Any notice required by the provisions of this Article IV(B)(3) to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

4. Redemption. The Preferred Stock is not redeemable.

5. Voting Rights.

(a) Except with respect to the election of directors (which shall be governed by subsection (b) below) and as otherwise provided herein or as required by law, the holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, as a single class, except as required by law or these articles, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) As long as at least 1,000,000 shares of Series 2 Preferred remain outstanding, the holders of the Series 2 Preferred, voting separately as a class, shall have the right to elect, remove and replace three (3) members of the Board of Directors. The holders of Common Stock, voting together as a single class, shall have the right to elect, remove and replace two (2) members of the Board of Directors. The holders of Preferred Stock and Common Stock, voting together as a single class on an as converted basis, shall have the right to elect, remove and replace the remaining members of the Board of Directors.

(c) Notwithstanding the provisions of Section 223(a)(1) and 223(a)(2) of the General Corporation Law, any vacancy, including newly created directorships resulting from any increase in the authorized number of directors or amendment of this Restated Certificate of Incorporation, and vacancies created by removal or resignation of a director, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; provided, however, that where such vacancy occurs among the directors elected by the holders of a class or series of stock, the holders of shares of such class or series may override the Board's action to fill such vacancy by (i) voting for their own designee to fill such vacancy at a meeting of the

Company's stockholders or (ii) written consent, if the consenting stockholders hold a sufficient number of shares to elect their designee at a meeting of the stockholders. Any director may be removed during his or her term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to written consent.

(d) Notwithstanding anything in this Certificate of Incorporation to the contrary, any action that adversely affects the rights, preferences and privileges of any series of Preferred Stock, but does not so affect the entire class of Preferred Stock, shall require the consent of the holders of a majority of such affected series of Preferred Stock (voting together as a single class on an as-converted basis).

6. Protective Provisions.

(a) So long as at least 2,250,000 shares of Series 2 Preferred are outstanding, the Corporation shall not (by merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series 2 Preferred:

(i) alter, change or amend the rights, preferences or privileges of the Preferred Stock;

(ii) authorize or designate, whether by reclassification or otherwise, any new class or series of stock or any other securities convertible into equity securities of the Company ranking on a parity with or senior to any series of Preferred Stock in right of redemption, liquidation preference, voting or dividend rights;

(iii) consummate a transaction that is deemed a liquidation, dissolution or winding up of the Corporation pursuant to Article IV(B)(2)(e);

(iv) amend or waive any provision of the Corporation's Certificate of Incorporation or Bylaws;

(v) increase or decrease the authorized number of directors constituting the Board of Directors;

(vi) redeem, repurchase or declare any dividend on any capital stock of the Company; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, directors, officers or consultants pursuant to agreements under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment or service; or

(vii) pay dividends to holders of Preferred Stock or Common Stock.

7. Status of Converted Stock. If any shares of Preferred Stock shall be converted pursuant to Article IV(B)(3) hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation. The Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(C) Common Stock.

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, if and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation the assets of this corporation shall be distributed as provided in Article IV(B)(2).

3. Redemption. The Common Stock is not redeemable at the option of the holder.

4. Voting Rights. Subject to Article IV(B)(5), the holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

5. 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 outstanding stock of the Corporation, voting together as a single class, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of Delaware.

ARTICLE V

Subject to compliance with Section 6(a) of Article IV above, the Board of Directors of the Corporation is expressly authorized to make, alter or repeal Bylaws of the Corporation.

ARTICLE VI

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

ARTICLE VII

(A) 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 breach of fiduciary duty as a director.

(B) The Corporation shall 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 or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

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

ARTICLE VIII

In the event that any member of the Corporation's Board of Directors who is not an employee of the Corporation, including any member of the Board of Directors who is also a partner or employee of an entity that is a holder of Preferred Stock (or Common Stock issued upon conversion thereof) and that is in the business of investing and reinvesting in other entities, or an employee of an entity that manages such an entity (each, a "Fund"), acquires knowledge of a potential transaction or other matter other than directly in connection with such individual's service as a member of the Board of Directors (including, if applicable, in such individual's capacity as a partner or employee of the Fund or the manager or general partner of a Fund) that may be an opportunity of interest for both the Corporation and such individual or Fund (a "Corporate Opportunity"), then, provided, that such director has acted in good faith, the Corporation: (i) renounces any interest or expectancy that such director or Fund offer an opportunity to participate in such Corporate Opportunity to the Corporation, and (ii) to the fullest extent permitted by law, waives any claim that such opportunity constituted a Corporate Opportunity that should have been presented by such director or Fund to the Corporation or any of its affiliates.

* * *

The foregoing Amended and Restated Certificate of Incorporation has been duly adopted by the Corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

Executed at San Mateo, California, on February 4, 2008.

/s/ Thomas Frank

Thomas Frank, Chief Executive Officer

/s/ Peter Chantel

Peter Chantel, Chief Financial Officer