

**ARDIAN, INC.**

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION**

Ardian, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), certifies that:

A. The name of the Corporation is Ardian, Inc. The Corporation was originally incorporated under the name "Foundry Newco VIII, Inc." The Corporation's original Certificate of Incorporation was filed with the Delaware Secretary of State of the State of Delaware on October 8, 2003.

B. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Section 242 and Section 245 of the Delaware General Corporation Law, and has been duly approved by the written consent of the stockholders of the Corporation in accordance with Section 228 of the Delaware General Corporation Law.

C. The text of the Certificate of Incorporation, as amended and restated, is amended and restated to read in its entirety as set forth in EXHIBIT A attached hereto.

**IN WITNESS WHEREOF**, Ardian, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by Andrew D. Cleeland, a duly authorized officer of the Corporation, on January 5, 2009.

/s/ Andrew D. Cleeland

Andrew D. Cleeland

President and Chief Executive Officer

## **EXHIBIT A**

### **ARTICLE I**

The Corporation's name is Ardian, Inc.

### **ARTICLE II**

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

### **ARTICLE III**

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

### **ARTICLE IV**

The total number of shares the Corporation has the authority to issue is 51,830,395 shares of stock, consisting of 30,000,000 shares of Common Stock, par value \$0.001 per share, and 21,830,395 shares of Preferred Stock, par value \$0.001 per share. 2,700,000 shares of Preferred Stock shall be designated "Series A Preferred Stock," 6,227,270 shares of Preferred Stock shall be designated "Series B Preferred Stock," 6,403,125 shares of Preferred Stock shall be designated "Series B-1 Preferred Stock," and 6,500,000 shares of Preferred Stock shall be designated "Series C Preferred Stock."

### **ARTICLE V**

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

1. **Definitions.** For purposes of this Article V, the following definitions apply:

(a) **"Anti-Dilution Rights"** means the Conversion Price adjustment pursuant to Section 4(d)(iv) of this Article V.

(b) **"Board"** means this Corporation's then existing Board of Directors.

(c) **"Certificate"** means this Amended and Restated Certificate of Incorporation.

(d) **"Conversion Price"** means, with respect to the Series A Preferred Stock, \$0.60 per share, with respect to the Series B Preferred Stock, \$1.10 per share, with respect to the Series B-1 Preferred Stock, \$1.60 per share, and with respect to the Series C Preferred

Stock, \$9.46 per share (each of which is subject to adjustment from time to time in connection with Anti-Dilution Rights and for Recapitalizations affecting the Common Stock, as set forth in this Certificate).

(e) **"Corporation"** means Ardian, Inc.

(f) **"Convertible Securities"** means any representations of indebtedness, shares, or other securities convertible into or exchangeable directly or indirectly for Common Stock, but excluding Options and excluding shares of Preferred Stock.

(g) **"Distribution"** means the Corporation's transfer of cash or other property without consideration, whether by way of dividend, exchange, reclassification, cancellation, or otherwise, payable other than in Common Stock, or the purchase or redemption of shares issued by the Corporation for cash or property, in each case other than: (i) any repurchases of Common Stock issued to or held by employees, officers, directors, or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for a repurchase right, (ii) any repurchases of Common Stock issued to or held by employees, officers, directors, or consultants of the Corporation or its subsidiaries pursuant to first refusal rights contained in agreements providing for a first refusal right or contained in the Corporation's Bylaws, (iii) any repurchases of the Corporation's capital stock in connection with the settlement of disputes with any stockholder approved by the Corporation's Board of Directors, and (iv) any other repurchases or redemptions of the Corporation's capital stock approved by the holders of a majority of the then outstanding shares of Preferred Stock, voting together as a single class.

(h) **"Dividend Rate"** means, with respect to the Preferred Stock, an annual rate equal to 8% of the Original Issue Price.

(i) **"Liquidation Preference"** means, with respect to the Preferred Stock and on a per share basis, the Original Issue Price applicable for such series of Preferred Stock plus declared but unpaid dividends attributable to the applicable series of Preferred Stock.

(j) **"Options"** means rights, options or warrants to subscribe for, purchase, or otherwise acquire Common Stock.

(k) **"Original Issue Price"** means, with respect to the Series A Preferred Stock, \$0.60 per share, with respect to the Series B Preferred Stock, \$1.10 per share, with respect to the Series B-1 Preferred Stock, \$1.60 per share, and with respect to the Series C Preferred Stock, \$9.46 per share (each of which is subject to adjustment from time to time for Recapitalizations affecting the Preferred Stock as set forth in this Certificate).

(l) **"Preferred Stock"** means the Series A Preferred Stock, the Series B Preferred Stock, the Series B-1 Preferred Stock, and the Series C Preferred Stock.

(m) **"Purchase Agreement"** means the Series C Preferred Stock Purchase Agreement, executed by and among the Corporation and purchasers of Series C Preferred Stock.

(n) **"Recapitalization"** means any stock dividend, stock split, combination, reorganization, recapitalization, or other reclassification affecting the Corporation's equity securities.

2. **Dividends.**

(a) **Preferred Stock.** The holders of shares of Preferred Stock will be entitled to receive dividends, when, as, and if declared by the Corporation's Board of Directors, out of any assets at the time legally available for the payment of dividends, at the Dividend Rate payable in preference and priority to any declaration or payment of any Distribution on the Corporation's Common Stock. No Distributions will be made with respect to the Common Stock until all declared but unpaid dividends on the Preferred Stock have been paid or set aside for payment to the Preferred Stock holders. Payment of any dividends to any holders of the Preferred Stock shall be on a pro-rata, pari passu basis in proportion to the Dividend Rate for each series of Preferred Stock. The right to receive dividends on shares of Preferred Stock will not be cumulative, and no right to such dividends will accrue to holders of Preferred Stock by reason of the fact that dividends on such shares are not declared in any particular year.

(b) **Common Stock.** No dividends will be paid on any shares of Common Stock (other than dividends payable solely in Common Stock) unless all declared but unpaid dividends on the Preferred Stock have been paid and additional dividends on shares of Preferred Stock in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid for each share of Common Stock are also paid. Subject to the preceding sentence, dividends may be paid on the Common Stock and the Preferred Stock in proportion to the number of shares of Common Stock then outstanding if each share of Preferred Stock were converted at the then effective Conversion Rate (as defined in Section 4(a) of this Article V) as, when, and if declared by the Corporation's Board of Directors, subject to the prior dividend rights of the Preferred Stock as provided in Section 2(a) of this Article V and to Section 6 of this Article V. The right to receive dividends on shares of Common Stock will not be cumulative, and no right to such dividends will accrue to holders of Common Stock by reason of the fact that dividends on such shares are not declared or paid in any particular year.

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

(d) **Consent to Certain Distributions.** As authorized by California Corporations Code Section 402.5(c), neither California Corporations Code Section 502 nor California Corporations Code Section 503 will apply with respect to payments made by the Corporation in connection with any Distribution.

3. Liquidation Rights.

(a) Liquidation Preference. In the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary (each a "Liquidation Event"), the holders of the then outstanding shares of Preferred Stock will be entitled to receive, pari passu, out of net available funds and assets (or, in the event of a reorganization as described in Section 3(d)(i) below, out of the consideration therefor), before and in preference to any Distribution (or to setting apart any such funds or assets for Distribution) of any of the Corporation's net available funds and assets (or, in the event of a reorganization as described in Section 3(d)(i) below, out of the consideration therefor) to the holders of the Common Stock by reason of their ownership of such Common Stock, an amount per share for each share of Preferred Stock then held by such holders equal to the Liquidation Preference in effect for the applicable series of Preferred Stock. Upon a Liquidation Event, if the Corporation's assets legally available for distribution (or, in the event of a reorganization as described in Section 3(d)(i) below, the consideration ) to the holders of the then outstanding shares of Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a), then the Corporation's entire assets legally available for distribution will be distributed with equal priority and pro-rata among the holders of the then outstanding shares of Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a).

(b) Remaining Assets. After paying (or setting aside for payment) to the holders of the then outstanding shares of Preferred Stock of the full preferential amounts specified in Section 3(a), then the Corporation's entire remaining assets legally available for distribution by the Corporation will be distributed with equal priority and pro-rata among holders of the Corporation's then outstanding shares of Common Stock in proportion to the number of the then outstanding shares of Common Stock then held by each such holder.

(c) Shares Not Treated as Both Preferred Stock and Common Stock in Any Distribution or Reorganizations. Shares of Preferred Stock will not be entitled to be converted into shares of Common Stock to participate in any Distribution, or series of Distributions, as shares of Common Stock, without first foregoing participation in the Distribution, or series of Distributions, as shares of Preferred Stock. In addition, shares of Preferred Stock will not be entitled to be converted into shares of Common Stock to participate in any reorganization as described in Section 3(d)(i) below as shares of Common Stock, without first foregoing the applicable Liquidation Preference that would be available to such shares of Preferred Stock pursuant to Section 3(a) hereof. Prior to any dividend, other Distribution or reorganization as described in Section 3(d)(i) below, holders of shares of Preferred Stock shall be afforded reasonable notice and opportunity to convert to Common Stock in advance of any such Distribution or reorganization as described in Section 3(d)(i) below.

(d) Reorganization. For purposes of this Section 3, a Liquidation Event (as defined in Section 3(a)) will be deemed to be occasioned by, or to include, (i) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any stock acquisition, reorganization, merger, or consolidation, but specifically excluding (A) any such transaction if the primary purpose of such transaction is to change the Corporation's domicile, or (B) any sale of stock for capital raising

purposes approved by the Board of Directors) that results in a transfer of at least 50% of the total voting power represented by the Corporation's voting securities before such acquisition; or (ii) a sale, lease, or other conveyance of all or substantially all of the Corporation's assets.

(e) Valuation of Non-Cash Consideration. If any of the Corporation's assets distributed to stockholders in connection with any liquidation, dissolution, or winding up of the Corporation are in a form other than cash, then the value of such assets will be their fair market value as determined in good faith by the Corporation's Board of Directors, except that any publicly-traded securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Corporation will be valued as follows:

(i) For securities that are not subject to an investment letter or to other similar free marketability restrictions (which are covered by Section 3(e)(ii) below):

(1) if the securities are then traded on a national securities exchange or the Nasdaq Stock Market (or a similar national quotation system), then such securities' value will be deemed to be the average of such securities' closing prices on such exchange or system over the 10-trading-day period ending five trading days before the Distribution date; and

(2) if the securities are actively traded over-the-counter, then such securities' value will be deemed to be the average of such securities' closing bid prices over the 10-trading-day period ending five trading days before the Distribution date.

(ii) The valuation method for securities that are subject to investment letter or to other free marketability restrictions (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) will be to make an appropriate discount from the market value determined as above in Section 3(e)(i)(1) or Section 3(e)(i)(2), as applicable, to reflect the approximate fair market value of such securities, as mutually determined by (a) the Corporation, and (b) the holders of a majority of the then outstanding shares of Preferred Stock voting together as a single class.

(f) Determination of Certain Distribution Dates. In the event of a merger or other acquisition of the Corporation by another entity, then the Distribution date will be deemed to be the date that such transaction closes.

(g) Certain Definitions. For purposes of Section 3(e), "trading day" means any day on which the applicable exchange or system (on which the securities to be distributed are traded) is open for business, and "closing prices" or "closing bid prices" means: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange, or the Nasdaq Stock Market, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets, and systems, the market price as of the end of the "regular hours" trading period that is generally accepted as such for such exchange, market, or system. After the filing of this Certificate, if the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day will change from those set forth

above, then the fair market value will be determined as of such other generally accepted benchmark times.

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

(a) Right to Convert. Each share of Preferred Stock will be convertible, at the holder's option and without payment of additional consideration by the holder, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into that number of fully-paid, non-assessable shares of Common Stock determined by dividing the Original Issue Price for the relevant series by the then applicable Conversion Price for such series. The number of shares of Common Stock into which each share of Preferred Stock of a series may be converted pursuant to the preceding formula is hereinafter referred to as the "Conversion Rate" for such series. Upon any decrease or increase in the Conversion Price or the Original Issue Price for any series of the Preferred Stock, as described in this Section 4, the Conversion Rate for such series will be appropriately increased or decreased.

(b) Automatic Conversion. Every share of Preferred Stock will automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share upon the earlier of (i) immediately before the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "Securities Act"), covering the offer and sale of the Corporation's Common Stock with aggregate proceeds to the Corporation of at least \$40,000,000 (before deduction of underwriters' commissions and expenses) and with a per share price of at least \$11.83 (subject to adjustment from time to time for Recapitalizations as set forth elsewhere in this Certificate), or (ii) subject to Section 6(b) of this Article V, the Corporation's receipt of a written request for such conversion from the holders of a majority of the then outstanding shares of Preferred Stock voting together as a single class, or, if later, the effective date for conversion specified in such requests (each such event referred to in clause (i) and clause (ii) of this Section 4(b), an "Automatic Conversion Event").

(c) Conversion Mechanics.

(i) No fractional shares of Common Stock will be issued upon conversion of Preferred Stock. Instead of any fractional shares to which a holder of Preferred Stock would otherwise be entitled, the Corporation will pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined in good faith by the Corporation's Board of Directors. For such purpose, all shares of Preferred Stock held by each holder of Preferred Stock will be aggregated, and any resulting fractional share of Common Stock will be paid in cash.

(ii) Before any holder of Preferred Stock will be entitled to convert shares of Preferred Stock into full shares of Common Stock and to receive Common Stock certificates upon such conversion, the holder will either (A) surrender the certificate or certificates representing the Preferred Stock being converted, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, or (B) notify the Corporation or its

transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and will give written notice to the Corporation at such office that the holder elects to convert the Preferred Stock into Common Stock; provided, however, that on the date of an Automatic Conversion Event, the outstanding shares of Preferred Stock will be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent.

(iii) On the effective date of an Automatic Conversion Event, each record holder of shares of Preferred Stock will be deemed to be the record holder of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock will not have been surrendered at the Corporation's office, that notice from the Corporation will not have been received by any record holder of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock will not then be actually delivered to such holder. The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date; provided, however, that if the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act, or a merger, sale, financing, or liquidation of the Corporation or other event the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction or upon the occurrence of such event, in which case the persons entitled to receive the Common Stock upon conversion of Preferred Stock will not be deemed to have converted such Preferred Stock until immediately before the closing of such transaction or occurrence of such event.

(d) Conversion Price Adjustments for Certain Dilutive Issuances.

(i) Special Definition. For purposes of this Section 4(d), "Additional Shares" means all shares of Common Stock issued (or, pursuant to Section 4(d)(iii) of this Article V, deemed to be issued) by the Corporation after the filing of this Certificate other than issuances or deemed issuances of:

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

(2) shares of Common Stock issuable or issued to the Corporation's officers, directors, employees, consultants, or advisors pursuant to the Corporation's 2003 Stock Option Plan, or other employee stock incentive programs or



arrangements approved by the Corporation's Board of Directors, or upon exercise of Options or Convertible Securities granted to such parties, each pursuant to any such plan or arrangement;

(3) shares of Common Stock issuable or issued upon the exercise, exchange, adjustment, or conversion of Options or Convertible Securities outstanding as of the filing of this Certificate;

(4) shares of Common Stock issuable or issued pursuant to the bona fide acquisition of the Corporation or of another corporation or other business entity by the Corporation by merger, purchase of all or substantially all of such entity's assets or other reorganization or pursuant to a joint venture agreement, *provided*, in each such case, that such issuances are approved unanimously by the Corporation's Board of Directors;

(5) shares issuable or issued as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made pursuant to a Recapitalization;

(6) shares of Common Stock issued in a registered public offering under the Securities Act pursuant to which the Preferred Stock is converted into Common Stock;

(7) shares of Common Stock issuable or issued to banks, equipment lessors, or other entities pursuant to a bona fide debt financing or commercial leasing transaction or loan guarantee entered into for primarily non-equity financing purposes approved by the Corporation's Board of Directors;

(8) shares of Common Stock issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships; *provided*, in each such case, that such issuances are approved unanimously by the Board of Directors;

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

(10) any right, option or warrant to acquire any security convertible into the securities contained in Section 4(d)(i)(1) through Section 4(d)(i)(9) above; and

(11) shares of issued or issuable Common Stock excluded from the definition of "Additional Shares" by the written consent of the holders of a majority of the then outstanding shares of Preferred Stock voting together as a single class; *provided however* that if such shares of Common Stock are being issued to financial investors and/or existing stockholders of the Corporation (a "**Financing Transaction**"), then the consent of the holders of a majority of the outstanding Series C Preferred Stock shall also be required unless (x) at least two-thirds (2/3rds) of the members of the Company's Board of Directors, acting in good faith, determine that the Financing Transaction is in the best interests of the Company and that the Company has undertaken appropriate, diligent efforts with respect to

identifying potential alternative financing transactions (such approved Financing Transaction, the "Approved Financing Transaction") and (y) at least thirty percent (30%) of the then outstanding shares of Series C Preferred Stock consent to the Financing Transaction; and (z) the holders of Series C Preferred Stock are offered the opportunity to participate in such issuance on the same terms and conditions offered to other participants on a pro rata basis (calculated based on the total number of shares of Common Stock issuable on conversion of such shares of Series C Preferred Stock relative to the total number of shares of Common Stock issued or issuable, directly or indirectly, upon the exercise and/or conversion of all securities exercisable and/or convertible into shares of Common Stock).

(ii) No Conversion Price Adjustment. No adjustment in the Conversion Price for any series of Preferred Stock will be made in respect of the issuance of any Additional Shares, unless the consideration per share (as determined pursuant to Section 4(d)(v)) for such Additional Share issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately before, such issuance for such series of Preferred Stock.

(iii) Deemed Issue of Additional Shares. At any time or from time to time after the filing of this Certificate, if the Corporation will issue any Options or Convertible Securities or will fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities, will be deemed to have been issued as of the time of such issue or, in case such a record date will have been fixed, as of the close of business on such record date, provided that Additional Shares will not be deemed to have been issued unless the consideration per share (determined pursuant to Section 4(d)(v)) of such Additional Shares would be less than the Conversion Price for such series of Preferred Stock in effect on the date of and immediately before such issuance or such record date (as the case may be) and provided further in any such case in which Additional Shares are deemed to be issued:

(1) no further adjustment in the Conversion Price of any series of Preferred Stock will be made upon the subsequent issuance of Convertible Securities or shares of Common Stock in connection with the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion, or exchange thereof, then the Conversion Price for each series of Preferred Stock computed upon the original issuance thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, will, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease

insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(3) no readjustment pursuant to Section 4(d)(iii)(2) of this Article V will have the effect of increasing the Conversion Price for a series of Preferred Stock to an amount above the Conversion Price that would have resulted from other issuances of Additional Shares and any other adjustments provided for herein between the original adjustment date and such readjustment date;

(4) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities that will not have been exercised, the Conversion Price of each series of Preferred Stock computed upon the original issuance thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon will, upon such expiration, be re-computed as if:

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

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

(5) if such record date will have been fixed and such Options or Convertible Securities are not issued on such record date, then the adjustment previously made in the Conversion Price for a series of Preferred Stock that became effective on such record date will be canceled as of the close of business on such record date, and thereafter the Conversion Price for such series of Preferred Stock will be adjusted pursuant to this Section 4(d)(iii) as of the actual date of their issuance.

(iv) Conversion Price Adjustment Upon Issuance of Additional Shares. If the Corporation issues Additional Shares (including Additional Shares deemed to be issued pursuant to Section 4(d)(iii)) without consideration or for a consideration per share less than the Conversion Price for a series of Preferred Stock in effect on the date of and immediately before such issuance, then, the Conversion Price of the affected series of Preferred Stock will be reduced, concurrently with such issuance, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which will be the number of shares of Common Stock outstanding immediately before such issuance plus the number of shares that the aggregate consideration received by the Corporation for the total number of Additional Shares so issued would purchase at such Conversion Price, and the denominator of which will be the number of shares of Common Stock outstanding immediately before such issuance plus the number of such Additional Shares so issued. Notwithstanding the foregoing, the Conversion Price will not be reduced at such time if the amount of such reduction would be less than \$0.01 per share, but any such amount will be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal \$0.01 per share or more in the aggregate. For the purposes of this Section 4(d)(iv), all shares of Common Stock issuable upon exercise of outstanding Options or the conversion of outstanding Convertible Securities and shares of Preferred Stock, and all Additional Shares deemed issued pursuant to Section 4(d)(iii), will be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this Section 4(d), the consideration received by the Corporation for the issuance (or deemed issuance) of any Additional Shares will be computed as follows:

(1) Cash and Property. Such consideration will:

(a) insofar as such consideration consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends (if any);

(b) insofar as such consideration consists of property other than cash, be computed at the fair market value of such property at the time of such issue, as determined in good faith by the Corporation's Board of Directors; and

(c) in the event Additional Shares are issued together with other Corporation shares, securities, or other assets for consideration that covers both, be the proportion of such consideration so received, computed as provided in clause (a) and clause (b) above, as reasonably determined in good faith by the Corporation's Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares deemed to have been issued pursuant to Section 4(d)(iii) of this Article V will be determined by dividing

(a) the total amount, if any, received or receivable by the Corporation as consideration for the issuance of such Options or Convertible

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

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

(e) Adjustments for Common Stock Subdivisions or Combinations. In the event the outstanding shares of Common Stock will be subdivided (by stock split, payment of a stock dividend, or otherwise) into a greater number of shares of Common Stock, then the Conversion Price in effect immediately before such subdivision will, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock will be combined (by reverse stock split, reclassification, or otherwise) into a lesser number of shares of Common Stock, then the Conversion Price in effect immediately before such combination will, concurrently with the effectiveness of such combination, be proportionately increased.

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

(g) Adjustments for Reclassification, Exchange, and Substitution. Subject to Section 3 of this Article V, if the Common Stock issuable upon conversion of the Preferred Stock will be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares provided for above), then, in any such event, instead of the number of shares of Common Stock that the holders would otherwise have been entitled to receive, each holder of such Preferred Stock will have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock that a holder of the number of shares of Common Stock deliverable upon conversion of such series of the Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided in this Certificate with respect to such other shares.

(h) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation, at its own expense, will promptly compute such adjustment or readjustment in accordance with the terms of this Certificate 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 will, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished, to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price as then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property that would then be received upon the conversion of Preferred Stock.

(i) Conversion Price Adjustment Waiver. Notwithstanding anything in this Certificate to the contrary, any downward adjustment of the Conversion Price may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of a majority of the then outstanding shares of the applicable series of Preferred Stock. Any such waiver will bind all future holders of shares of such series of Preferred Stock.

(j) Reservation of Stock Issuable Upon Conversion. At all times and solely for the purpose of implementing the conversion of the shares of Preferred Stock, the Corporation will reserve and keep available out of its authorized but unissued shares of Common Stock such number of the Corporation's shares of Common Stock as will from time to time be sufficient to permit the conversion of all then outstanding shares of the Preferred Stock. At any time, if the number of authorized but unissued shares of Common Stock will not be sufficient to permit the conversion of all then outstanding shares of the Preferred Stock, then 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 will be sufficient for such purpose.

5. Voting.

(a) General.

(i) Restricted Class Voting. Except as otherwise expressly provided in this Certificate or as required by law, the holders of Preferred Stock and the holders of Common Stock will vote together as a single class and not as separate classes.

(ii) Restricted Series Voting. Other than as expressly provided in this Certificate or as required by law, the holders of all series of Preferred Stock will vote together and not as separate classes.

(iii) Preferred Stock. Each holder of Preferred Stock will be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock held by such holder could be converted as of the record date. The holders of shares of Preferred Stock will be entitled to vote with the holders of Common Stock (voting together as a single class and on an as-converted to Common Stock basis) on all matters on which the Common Stock will be entitled to vote. Holders of Preferred Stock will be entitled

to notice of any stockholders' meeting in accordance with the applicable provisions of the Delaware General Corporation Law, the Corporation's Bylaws, and any other applicable law. Fractional votes will not, however, be permitted and any fractional voting rights resulting from the formula specified above (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted), will be disregarded.

(iv) Common Stock. Each holder of shares of Common Stock will be entitled to one vote for each share of Common Stock held by such holder.

(v) Authorized Common Stock Adjustment. Subject to Article V, Section 6, the number of shares of authorized 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 then outstanding Corporation capital stock voting together as a single class and on an as-converted to Common Stock basis.

(vi) Cumulative Voting. So long as Section 2115 of the California General Corporation Law purports to make Section 708(a), Section 708(b), and Section 708(c) of the California General Corporation Law applicable to the Corporation, the Corporation's stockholders will have the right to cumulate their respective votes in connection with the election of directors as provided in Section 708(a), Section 708(b), and Section 708(c) of the California General Corporation Law.

#### 6. Protective Provisions.

(a) So long as at least 3,000,000 shares of Preferred Stock ever issued are outstanding, the Corporation will not (whether by merger, recapitalization, amendment or otherwise), without first receiving the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Preferred Stock voting together as a single class:

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

(ii) change the aggregate number of authorized shares of Preferred Stock or the aggregate number of authorized shares of Common Stock;

(iii) create (by reclassification or otherwise) any new class or series of shares having any rights, preferences, or privileges superior to or on a parity with any outstanding shares of Preferred Stock or increase the authorized or designated number of such new class or series of shares;

(iv) declare or pay any Distribution on any class or series of the Corporation's capital stock;

(v) merge into, consolidate with, or implement a reorganization with any other corporation (other than a wholly-owned subsidiary corporation) in one or more related transactions or implement any other transaction or series of related transactions that result in the transfer of at least 50% of the voting power of the Corporation;

- (vi) sell all or substantially all of the Corporation's assets;
- (vii) voluntarily dissolve or liquidate the Corporation; or
- (viii) change the number of authorized directors.

(b) So long as at least 975,000 shares of the Series C Preferred Stock ever issued are outstanding, the Corporation will not (whether by merger, recapitalization, amendment or otherwise), without first receiving the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series C Preferred Stock, voting separately as a series:

(i) change the aggregate number of authorized shares of Series C Preferred Stock;

(ii) alter or change the rights, preferences, or privileges of the Series C Preferred Stock (including with respect to Liquidation Preference, conversion, dividends or voting) so as to affect it adversely but not so affect the Preferred Stock as a class; *provided however* that adjustments to the conversion rates of the various series of Preferred Stock in accordance with the terms of Article V, Section 4 hereof shall not require such approval, except as specifically provided for under Article V Section 4(d)(11));

(iii) consummate a Liquidation Event unless (x) the holders of Series C Preferred Stock receive a payment per share of Series C Preferred Stock held prior to the Liquidation Event that is at least equal to the payment provided for under Article V, Section 3 of this certificate of incorporation or (y) the securities issued in respect of the Preferred Stock maintain the same aggregate and per share Liquidation Preference amounts and the same relative priority as was in effect for the Preferred Stock immediately prior to the Liquidation Event;

(iv) reduce the Liquidation Preference of the Series C Preferred Stock in connection with a Liquidation Event;

(v) alter or change the rights, preferences, or privileges of the Series A Preferred Stock, Series B Preferred Stock, or Series B-1 Preferred Stock with respect to payments on a Liquidation Event (including with respect to priority of payment, conversion and the amount to be paid per share), unless the rights, preferences or privileges of the Series C Preferred Stock are similarly altered or changed; *provided however* that adjustments to the conversion rates of the various series of Preferred Stock in accordance with the terms of Article V, Section 4 hereof shall not require such approval, except as specifically provided for under Article V Section 4(d)(11));

(vi) convert all outstanding shares of Preferred Stock into shares of Common Stock pursuant to Article V, Section 4(b) above (x) in connection with the consummation of a Liquidation Event, unless following such conversion the amount payable in the Liquidation Event in respect of one share of Common Stock multiplied by the Conversion Rate of the Series C Preferred Stock equals or exceeds the amount that one share of Series C Preferred Stock would be paid in connection with the Liquidation Event in accordance with the provisions of Section 3 of this Article V or (y) in connection with any issuance of capital stock of



the Corporation (whether it be common stock, preferred stock, other equity securities, or securities of any type whatsoever that are or may be convertible into capital stock of the Corporation), unless the holders of Series C Preferred Stock are offered the opportunity to participate in such issuance on the same terms and conditions offered to other participants on a pro rata basis (calculated based on the total number of shares of Common Stock issuable on conversion of such shares of Series C Preferred Stock relative to the total number of shares of Common Stock issued or issuable, directly or indirectly, upon the exercise and/or conversion of all securities exercisable and/or convertible into shares of Common Stock);

(vii) cause a redemption or repurchase of the Series A Preferred Stock, Series B Preferred Stock, or Series B-1 Preferred Stock; or

(viii) amend this Section 6(b).

For the purpose of determining evaluation with Section 6(b)(ii) above, any amendment to the Certificate altering or changing the rights, preferences, or privileges of the Series C Preferred Stock so as to affect it adversely, whether conducted pursuant to Section 242 of the Delaware General Corporation Law, by merger pursuant to Section 251 of the Delaware General Corporation Law, or otherwise, shall be evaluated as if such amendment had been, or was proposed to be, effectuated pursuant to Section 242 of the Delaware General Corporation Law.

7. Notices. Any notice required by the provisions of this Article V to be given to the holders of Preferred Stock will be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the Corporation's books or if such notice is given in any other manner permitted by law.

8. No Reissuance. No shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion, or otherwise will be reissued, and all such shares will be canceled, retired, and eliminated from the shares that the Corporation will be authorized to issue.

9. No Redemption. The Preferred Stock and Common Stock are not redeemable.

## ARTICLE VI

1. The Corporation will have perpetual existence.

2. Elections of directors need not be by written ballot, unless a stockholder demands election by written ballot at the applicable stockholder meeting and before the voting begins, or unless the Corporation's Bylaws provide that elections of directors must be by written ballot.

3. The number of directors that constitute the Corporation's Board of Directors will be as specified in the Corporation's Bylaws.

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

5. Stockholders' meetings may be held inside or outside the State of Delaware, as the Bylaws may provide. The Corporation's books may be kept (subject to any provisions contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Corporation's Board of Directors or in the Corporation's Bylaws.

6. Advance notice of new business and stockholder nominations for the election of directors will be given in the manner and to the extent provided in the Corporation's Bylaws.

7. The Corporation reserves the right to adopt, amend, alter, amend, supplement, rescind, or repeal in any respect any provisions contained in this Certificate, in the manner now or subsequently prescribed by statute, and all rights conferred upon stockholders in this Certificate are granted subject to this reservation.

#### ARTICLE VII

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

2. To the fullest extent permitted by applicable law, the Corporation may indemnify any person made or threatened to be made a party to any action or proceeding, whether criminal, civil, administrative, or investigative, by reason of the fact that such person, such person's testator, or such person's intestate is or was a director, officer, or employee of the Corporation or any predecessor of the Corporation or serves or served at any other enterprise as a director, officer, or employee at the request of the Corporation or of any predecessor of the Corporation.

3. Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of this Certificate that is inconsistent with this Article VII, will 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, before such amendment, repeal, or adoption of an inconsistent provision.

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