

**THIRD AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF**

**ANULEX TECHNOLOGIES, INC.**

(Original Certificate of Incorporation filed with the Secretary of State on February 21, 2001)

**ARTICLE 1.**

The name of this Corporation is Anulex Technologies, Inc.

**ARTICLE 2.**

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

**ARTICLE 3.**

The Corporation shall have perpetual duration.

**ARTICLE 4.**

The registered office of this Corporation in Delaware is The Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, and the name of its registered agent is The Corporation Trust Company.

**ARTICLE 5.**

**A. Authorized Shares.**

The total number of shares of stock which this Corporation is authorized to issue is 46,000,000 shares, par value \$.01 per share, of which 27,621,769 shares are designated common stock (the "Common Stock") and 18,378,231 shares are designated preferred stock. The number of authorized shares of the Common Stock as set forth in this Third Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") may be increased or decreased by an amendment to the Certificate of Incorporation by the affirmative vote of the holders of a majority of the outstanding shares of capital stock of the Corporation entitled to vote on any matters with which the holders of Common Stock have the right to vote as contemplated by Section 242 of the DGCL without regard to the provisions of Section 242(b) thereof.

**B. Preferred Stock.**

Authority is hereby expressly vested in the board of directors, subject to the provisions of this Article 5 and to the limitations prescribed by law, to authorize the issue from time to time of one or more series of preferred stock and with respect to each such series to fix by resolution or resolutions adopted by the affirmative vote of a majority of the whole board of directors providing for the issue of such series the voting powers, full or limited, if any, of the shares of such series and the designations, preferences and relative, participating, optional or other special rights and the qualifications, limitations or restrictions thereof, which prior to designation shall

be referred to as "Undesignated Preferred Shares." The authority of the board of directors with respect to each series shall include, but not be limited to, the determination or fixing of the following:

- (1) The number of shares constituting such series and the designation of such series.
- (2) The dividend rate of such series, the conditions and dates upon which such dividends shall be payable, the relation which such dividends shall bear to the dividends payable on any other class or classes or series of this Corporation's capital stock, and whether such dividends shall be cumulative or noncumulative.
- (3) Whether the shares of such series shall be subject to redemption by this Corporation at the option of either this Corporation or the holder or both or upon the happening of a specified event, and, if made subject to any such redemption, the times or events, prices and other terms and conditions of such redemption.
- (4) The terms and amount of any sinking fund provided for the purchase or redemption of the shares of such series.
- (5) Whether or not the shares of such series shall be convertible into, or exchangeable for, at the option of either the holder or this Corporation or upon the happening of a specified event, shares of any other class or classes or of any other series of the same or any other class or classes of this Corporation's capital stock, and, if provision be made for conversion or exchange, the times or events, prices, rates, adjustments, and other terms and conditions of such conversions or exchanges.
- (6) The restrictions, if any, on the issue or reissue of any additional preferred stock, including increases or decreases in the number of shares of any series subsequent to the issue of shares of that series.
- (7) The rights of the holders of the shares of such series upon the voluntary or involuntary liquidation, dissolution or winding up of this Corporation.
- (8) Any right to vote with holders of shares of any other series or class and any right to vote as a class, either generally or as a condition to specified corporate action, in addition to any voting powers required by law.

C. Designation of Series A, Series B and Series C Convertible Preferred Stock.

(a) Designation of Series A, Series B and Series C Convertible Preferred Stock.

(i) Designation: Number of Shares. A series of the Undesignated Preferred Shares is hereby designated as (I) "Series A Convertible Preferred Stock" (the "Series A Preferred Stock"), and the number of authorized shares constituting the Series A Preferred Stock shall be 3,868,075, (II) another series of the Undesignated Preferred Shares is hereby designated as "Series B Convertible Preferred Stock" (the

"Series B Preferred Stock"), and the number of authorized shares constituting the Series B Preferred Stock shall be 8,202,312, and (III) another series of the Undesignated Preferred Shares is hereby designated as "Series C Convertible Preferred Stock" (the "Series C Preferred Stock"), and the number of authorized shares constituting the Series C Preferred Stock shall be 6,307,844.

(ii) Rank. The Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall rank senior to all of the Common Stock, now outstanding or hereafter issued, with respect to all rights, preferences or privileges.

(b) Voting.

(i) General. Each holder of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall have that number of votes on all matters submitted to the stockholders that is equal to the number of shares of Common Stock into which such holder's applicable Series A Preferred Stock, Series B Preferred Stock and/or Series C Preferred Stock is then convertible, as hereinafter provided. Holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall not be entitled to cumulate their votes in the election of directors and shall not be entitled to preemptive rights to acquire shares of any class or series of capital stock of the Corporation (other than certain rights to acquire additional shares of capital stock expressly provided for in the Second Amended and Restated Investors' Rights Agreement among the Corporation, the holders of the Series A Preferred Stock, the holders of Series B Preferred Stock, the holders of Series C Preferred Stock and certain holders of the Common Stock). Except as otherwise provided herein and as required by law, the shares of capital stock of the Corporation shall vote as a single class on all matters submitted to the stockholders.

(ii) Election of Directors. The board of directors of the Corporation shall consist of no more than nine (9) members who shall be elected as follows:

(A) so long as at least 971,000 shares (appropriately adjusted in each case for any recapitalizations, stock combinations, stock dividends, stock splits and the like) of the Series A Preferred Stock are issued and outstanding, the holders of the Series A Preferred Stock, exclusively and voting as a single class, shall be entitled to elect two directors of the Corporation and to exclusively exercise any right of removal or replacement of such directors and the holders of any other shares of capital stock of the Corporation shall not have the right to vote such other shares of capital stock to remove or replace such directors;

(B) so long as at least 1,549,034 shares (appropriately adjusted in each case for any recapitalizations, stock combinations, stock dividends, stock splits and the like) of the Series B Preferred Stock and issued and outstanding, the holders of at least 66 2/3% the Series B Preferred Stock, exclusively and voting as a single class, shall be entitled to elect two directors of the Corporation and to exclusively exercise any right of removal or replacement of such directors and the holders of any other shares of capital stock of the Corporation shall not have the right to vote such other shares of capital stock to remove or replace such directors;

(C) so long as at least 1,261,568 shares (appropriately adjusted in each case for any recapitalizations, stock combinations, stock dividends, stock splits and the like) of the Series C Preferred Stock are issued and outstanding, the holders of the Series C Preferred Stock, exclusively and voting as a single class, shall be entitled to elect one director of the Corporation and to exclusively exercise any right of removal or replacement of such directors and the holders of any other shares of capital stock of the Corporation shall not have such the right to vote such other shares of capital stock to remove or replace such directors;

(D) the holders of the Common Stock, exclusively and voting as a single class, shall be entitled to elect two directors of the Corporation and to exclusively exercise any right of removal or replacement of such directors and the holders of any other shares of capital stock of the Corporation shall not have the right to vote such other shares of capital stock to remove or replace such directors; and

(E) the holders of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Common Stock, voting together as one class, shall be entitled to elect two directors of the Corporation and to exclusively exercise any right of removal and replacement of any such directors.

(iii) Class Votes by Series A Preferred Stock. Without the affirmative vote or written consent of the holders (acting together as a class) of at least forty percent (40%) of the shares of Series A Preferred Stock at the time outstanding, the Corporation shall not:

(A) amend the Certificate of Incorporation or take any other action so as to change the rights, preferences, privileges or limitations of the Series A Preferred Stock;

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

(C) authorize, designate or issue any new class or series of shares of capital stock having rights, preferences or privileges senior to or *pari passu* with the Series A Preferred Stock; or

(D) take any action that adversely affects the rights, preferences or privileges of the Series A Preferred Stock relative to any other series or class of capital stock.

(iv) Class Votes by Series B Preferred Stock. Without the affirmative vote or written consent of the holders (acting together as a class) of at least a majority of the shares of Series B Preferred Stock at the time outstanding, the Corporation shall not:

(A) amend the Certificate of Incorporation or take any other action so as to change the rights, preferences, privileges or limitations of the Series B Preferred Stock;

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

(C) authorize, designate or issue any new class or series of capital stock having rights, preferences or privileges senior to or *pari passu* with the Series B Preferred Stock; or

(D) take any action that adversely affects the rights, preferences or privileges of the Series B Preferred Stock relative to any other series or class of capital stock.

(v) Class Votes by Series C Preferred Stock. Without the affirmative vote or written consent of the holders (acting together as a class) of at least two-thirds (66 2/3%) of the shares of Series C Preferred Stock at the time outstanding, the Corporation shall not:

(A) amend the Certificate of Incorporation or take any other action so as to change the rights, preferences, privileges or limitations of the Series C Preferred Stock; or

(B) authorize, designate or issue any new class or series of shares of capital stock having rights, preferences or privileges senior to or *pari passu* with the Series C Preferred Stock.

In addition to the provisions set forth in subsections (b)(v)(A) and (B) above, without the affirmative vote or written consent of the holders (acting together as a class) of at least seventy-five percent (75%) of the shares of Series C Preferred Stock at the time outstanding, the Corporation shall not:

(x) alter or amend in any manner (including in connection with any reincorporation, recapitalization, reorganization or reclassification of

the Corporation's capital stock, or issuance of capital stock having rights, preferences or privileges senior to or *pari passu* with the Series C Preferred Stock) the liquidation rights of the Series C Preferred Stock as set forth in subsections (C)(d)(i) through (C)(d)(v) of this Certificate of Incorporation; provided that nothing in this clause (x) shall limit the ability of the Corporation to authorize, designate or issue a new class or series of capital stock having rights, preferences or privileges senior to or *pari passu* with the Series C Preferred Stock if the primary purpose of such action is the raising of capital by the Corporation, such action is approved pursuant to subsection (b)(v)(B) above and the terms and conditions of such capital raising transaction do not alter or amend the aforementioned liquidation rights of the Series C Preferred Stock;

(y) increase or decrease the number of authorized shares of Series C Preferred Stock; or

(z) take any action that adversely affects the rights, preferences or privileges of the Series C Preferred Stock relative to any other existing series or class of capital stock.

(vi) Class Votes by Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock. Without the affirmative vote or written consent of the holders of at least a majority of the shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, voting together as a class, at the time outstanding, the Corporation shall not:

(A) authorize or permit a subsidiary of the Corporation to sell shares of its stock to any person or entity other than the Corporation;

(B) redeem or repurchase shares of any of its securities, including, without limitation, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Common Stock, provided, however, that such restriction shall not prohibit the redemption or repurchase from directors, employees and consultants, pursuant to the Corporation's repurchase rights or obligations approved by the Corporation's board of directors and relating to shares of Common Stock included in the total permitted to be reserved pursuant to (I) below;

(C) declare or pay any dividend or make any other distribution on account of any shares of Common Stock;

(D) sell, lease or license all or substantially all of the assets of the Corporation;

(E) enter into any transaction or series of transactions which results in the stockholders of the Corporation immediately prior to the transaction owning less than 50% of the voting power of the Corporation immediately after the transaction;

(F) change the number of directors of the Corporation;

(G) liquidate, dissolve or effect a recapitalization or reorganization in any form of transaction (including, without limitation, any reorganization into a limited liability company, a partnership or any other non-corporate entity which is treated as a partnership for federal income tax purposes);

(H) enter into any agreement that would restrict the Corporation's ability to perform its obligations under any existing agreement with the holders of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock;

(I) unless pursuant to the unanimous approval of the board of directors of the Corporation, reserve more than a total of 4,930,000 issued and/or issuable shares of Common Stock (appropriately adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like), or securities convertible into, or exercisable for, Common Stock under any stock option or purchase plan(s); or

(J) take any action that changes the fundamental nature of the Corporation's business.

(c) Dividends.

(i) To the extent permitted under the DGCL, the Corporation shall pay preferential dividends in cash to the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock at such times and subject to the other terms and conditions provided in this section C. Except as otherwise provided herein, each share of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be entitled, on a *pari passu* basis, to dividends at a rate of \$.08 per share of Series A Preferred Stock per annum, \$.14 per share of Series B Preferred Stock per annum and \$.2536 per share of Series C Preferred Stock per annum or, if greater, equal to that paid on the Common Stock when and if declared by the board of directors. This dividend shall not be cumulative. Such dividends shall accrue only when, and if, they have been declared.

(ii) No dividends shall be declared or set aside for the Common Stock, unless prior thereto all declared and unpaid dividends on the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred

Stock shall be set aside and paid on all the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock. In the event any dividends are declared and paid on the Common Stock (other than dividends provided for in subsection (C)(e)(iv)), whether cash or non-cash, the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be entitled to the greater of: (A) the preferred dividend set forth in subarticle (C)(c)(i) above or (B) such dividends declared and paid on the Common Stock in proportion to the number of shares of Common Stock issuable to them upon conversion of the Preferred Stock then held by them.

(iii) Whenever a dividend provided for in the subsection (C)(c) shall be payable in property other than cash, the value of such dividend shall be deemed to be the fair market value of such property as determined in good faith by the board of directors.

(d) Liquidation

(i) Liquidation Priorities. In the event of an involuntary or voluntary liquidation, dissolution or winding up of the Corporation (or deemed occurrence of such event pursuant to subsection (C)(d)(iv)) at any time, the holders of shares of the Series C Preferred Stock shall be entitled to receive out of the assets of the Corporation an amount equal to \$3.170655 per share (as appropriately adjusted to reflect stock splits, stock dividends, reorganizations, consolidations and similar changes hereafter effected) for the Series C Preferred Stock plus an amount in cash equal to all declared but unpaid dividends thereon (the aggregate of such amount being hereafter referred to as the "Series C Liquidation Preference"), before any payment shall be made or any assets distributed to the holders of the Series A Preferred Stock, Series B Preferred Stock, Common Stock or any other class or series of shares ranking junior to the Series C Preferred Stock upon liquidation or dissolution of this Corporation. After payment or setting apart any payment to the holders of Series C Preferred Stock of the full Series C Liquidation Preference, if assets remain in the Corporation, the holders of shares of Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive out of the assets of the Corporation, on a *pari passu* basis, (i) an amount equal to \$1.00 per share (as appropriately adjusted to reflect stock splits, stock dividends, reorganizations, consolidations and similar changes hereafter effected) for the Series A Preferred Stock plus an amount in cash equal to all declared but unpaid dividends thereon (the aggregate of such amount being hereafter referred to as the "Series A Liquidation Preference") and (ii) an amount equal to \$1.75 per share (as appropriately adjusted to reflect stock splits, stock dividends, reorganizations, consolidations and similar changes hereafter effected) for the Series B Preferred Stock plus an amount in cash equal to declared but unpaid dividends thereon (the aggregate of such amount being hereafter referred to as the "Series B Liquidation



Preference"), before any payment shall be made or any assets distributed to the holders of the Common Stock, any other class or series of shares of capital stock participating with the holders of Common Stock with respect to such payment, or any other class or series of shares ranking junior to the Series A Preferred Stock and Series B Preferred Stock upon liquidation or dissolution of this Corporation.

(ii) Deficiencies Upon Liquidation. If, upon any involuntary or voluntary liquidation, dissolution or winding up of the Corporation (or deemed occurrence of such event pursuant to subsection (C)(d)(iv)), the assets available for distribution shall be insufficient to pay the full amount of the Series C Liquidation Preference to all holders of the Series C Preferred Stock, the holders of such shares of Series C Preferred Stock shall be distributed ratably among such holders in proportion to the full preferential amount each such holder is otherwise entitled to receive under this subsection. Thereafter, if, upon such aforementioned liquidation, dissolution or winding up of the Corporation, the remaining assets available for distribution shall be insufficient to pay the full amount of the Series A Liquidation Preference to all holders of shares of Series A Preferred Stock and the full amount of the Series B Liquidation Preference to all holders of shares of Series B Preferred Stock, the holders of such shares of Series A Preferred Stock and Series B Preferred Stock shall be distributed ratably among the holders of the Series A Preferred Stock and Series B Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive under this subsection.

(iii) Remaining Assets. After the payment or setting apart for payment to the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock of the full preferential amounts so payable to them and any other distributions that may be required with respect to any other classes or series of preferred stock that may from time to time come into existence, if assets remain in the Corporation, the holders of the Series C Preferred Stock and the Common Stock shall receive all of the remaining assets of the Corporation on a pro rata basis and on an as-if-converted basis until, with respect to the holders of Series C Preferred Stock, such holders shall have received an aggregate of \$8.7193 per share (including amounts paid pursuant to subsection (C)(d)(i) above), and thereafter the holders of Common Stock shall receive all of the then remaining assets of the Corporation on a pro rata basis.

(iv) Certain Events. For purposes of this section C, the term "dissolution" shall be deemed to include (A) the merger or consolidation of the Corporation into or with another corporation or the merger or consolidation of any other corporation into or with the Corporation (in which consolidation or merger any stockholders of the Corporation receive distributions of cash or securities or other property), unless the stockholders of the Corporation immediately prior to such merger or

consolidation own more than 50% of the voting securities of the surviving corporation, or (B) a sale, lease or license of all or substantially all of the Corporation's assets

(v) Non-Cash Assets. If any of the assets of the Corporation are to be distributed under this subsection (C)(d), or for any purpose, in a form other than cash, then the board of directors of the Corporation shall promptly and reasonably determine in good faith the fair market value of the assets to be distributed to the holders of preferred stock or common stock. The Corporation shall, upon receipt of such determination, give prompt written notice of the determination to each holder of shares of preferred stock or common stock. Notwithstanding the foregoing, the fair market value of any securities shall be valued as follows:

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

(1) If traded on a securities exchange or The Nasdaq National Market, the value shall be deemed to be the average of the closing sale prices of the securities on The Nasdaq National Market or such exchange, as applicable, over the thirty (30) calendar day period ending three (3) calendar days prior to the consummation of a liquidation, dissolution or winding up of the Corporation;

(2) 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) calendar day period ending three (3) calendar days prior to the consummation of a liquidation, dissolution or winding up of the Corporation; or

(3) If there is no active public market, the value shall be the fair market value thereof, as determined by a majority of the board of directors of the Corporation in good faith.

(B) 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 (A)(1), (2) or (3) to reflect the approximate fair market value thereof, as determined by a majority of the board of directors of the Corporation in good faith.

(e) Conversion of Preferred Stock.

(i) Mandatory Conversion Preferred Stock. The Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock

shall automatically be converted into shares of Common Stock of the Corporation, without any act by the Corporation or the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, upon the earlier of:

(A) concurrently with the closing of the first public offering by the Corporation of shares of Common Stock of the Corporation registered under the Securities Act of 1933, as amended, in which the aggregate public offering price of the securities sold for cash by the Corporation in the offering is at least \$35,000,000 and the public offering price per share of Common Stock is at least \$7.00 (as adjusted from time to time to reflect stock splits, dividends, recapitalizations, combinations or the like or as otherwise adjusted upon the affirmative vote or consent of the holders of (I) at least 66 2/3% of the shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, voting as a single class and (II) at least 75% of the shares of Series C Preferred Stock, voting as a single class), provided that the Common Stock of the Corporation is eligible for trading on the Nasdaq National Market (or its successor in interest) or is listed on the New York Stock Exchange (or its successor in interest); or

(B) the date upon which the affirmative vote or written consent in favor of such conversion is given by the holders (acting together as a class) of (I) at least 66 2/3% of the shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, at the time outstanding, voting together as a single class, and (II) at least 75% of the shares of Series C Preferred Stock at the time outstanding, voting together as a single class; provided that the consent required by this subsection (C)(e)(i)(B) shall not be required for any transaction or series of transactions described in subsections (C)(b)(vi)(D) and (C)(b)(vi)(E) if such transaction or series of transactions does not alter or amend the provisions relating to the liquidation rights of the Series C Preferred Stock as set forth in subsections (C)(d)(i) through (C)(d)(v) of this Certificate of Incorporation.

Each holder of a share of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock so converted shall be entitled to receive the full number of shares of Common Stock into which such applicable share of Series A Preferred Stock, Series B Preferred Stock and/or Series C Preferred Stock held by such holder could be converted if such holder had exercised its optional conversion right at the time of the closing of such public offering or the giving of such vote or consent, as applicable. Upon such conversion, each holder of an applicable share of Series A Preferred Stock, Series B Preferred Stock and/or Series C Preferred

Stock shall immediately surrender such share in exchange for appropriate stock certificates representing a share or shares of Common Stock of the Corporation.

(ii) Optional Conversion of Preferred Stock. At any time after the date of issuance of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, at the option of any holder thereof, the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be convertible, at the office of the Corporation (or at such other office or offices, if any, as the board of directors may designate), into fully paid and nonassessable shares of Common Stock of the Corporation, at the conversion price (as determined and adjusted from time to time in accordance with the provisions of subsection (C)(e)(iii) below), in effect at the time of conversion. To convert shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock into shares of Common Stock of the Corporation without payment, the holder thereof shall surrender at the principal office of the Corporation the certificate or certificates therefor, duly endorsed to the Corporation or in blank, and give written notice to the Corporation at such office that such holder elects to convert such shares. Shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be deemed to have been converted immediately prior to the close of business on the day of the surrender of such shares for conversion as herein provided, and the person entitled to receive the shares of Common Stock of the Corporation issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock at such time. As promptly as practicable on or after the conversion date, the Corporation shall issue and deliver or cause to be issued and delivered at such office a certificate or certificates for the number of shares of Common Stock of the Corporation issuable upon such conversion. If the conversion is in connection with a public offering, whether under this subsection (C)(e)(ii) or subsection (C)(e)(i) above, the conversion may, at the option of any holder tendering the applicable shares of Series A Preferred Stock, Series B Preferred Stock or Series C 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 applicable shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall not be deemed to have converted such shares until immediately prior to the closing of such sale of securities.

(iii) Conversion Price and Adjustments. The number of shares of Common Stock issuable upon conversion of each share of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, whether optional or mandatory conversion, shall be equal to: \$1.00, in the case of the Series A Preferred Stock, \$1.75, in the case of the Series B Preferred Stock and \$3.170655, in the case of the Series C Preferred

Stock, divided by the conversion price then in effect (the "Conversion Price"). The Conversion Price for each share of Series A Preferred Stock shall initially be \$1.00, the Conversion Price for each share of Series B Preferred Stock shall initially be 1.75, and the Conversion Price for each share of Series C Preferred Stock shall initially be \$3.170655, but each such applicable Conversion Price shall be subject to adjustment from time to time as hereinafter provided:

(A) Except for (1) options to purchase up to 4,930,000 issued and/or issuable shares (appropriately adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like, and as adjusted by the board of directors pursuant to subsection (C)(b)(vi)(I) above) of Common Stock granted to employees, consultants or directors of the Corporation pursuant to any stock purchase or stock option plan approved by the board of directors of the Corporation, including the issuance of Common Stock upon exercise of such options, (2) the issuance of shares of Common Stock upon conversion of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, (3) shares of Common Stock issued or issuable to lending or leasing institutions in connection with the Corporation's debt, equipment leasing or other non-equity interim financing approved by the board of directors, provided that such shares of Common Stock so issued or issuable do not in the aggregate exceed three percent (3%) of the fully-diluted capital stock of the Corporation, (4) warrants to purchase up to 112,500 shares of Series A Preferred Stock granted to the Corporation's agent in connection with the sale of the Series A Preferred Stock, and (5) such other issuances of shares of Common Stock of the Corporation as to which the provisions of this subsection (C)(e)(iii) may be waived by the affirmative vote of the holders of at least two-thirds (66 2/3%) of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, voting together as a class, if and whenever the Corporation shall issue or sell any shares of its Common Stock after the date on which shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock are first issued for a consideration per share less than the applicable Conversion Price in effect for the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock immediately prior to the time of such issue or sale, then, forthwith upon such issue or sale, the applicable Conversion Price of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be reduced to the price (calculated to the nearest cent) determined by dividing (x) an amount equal to the sum of (1) number of shares of Common Stock outstanding immediately prior to such issue or sale multiplied by the then existing conversion price and (2) the consideration, if any, received

by the Corporation upon such issue or sale, by (y) an amount equal to the sum of (1) the number of shares of Common Stock outstanding immediately prior to such issue or sale and (2) the number of shares of Common Stock thus issued or sold. For purposes of this subsection (C)(e)(iii)(A), the term Common Stock shall include shares of Common Stock issuable without the payment of any additional consideration or with payment of only nominal consideration upon exercise, conversion or exchange of any securities of the Corporation outstanding (including, but not limited to, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock).

For the purposes of this subsection (C)(e)(iii) the following clauses (1) to (4), inclusive, shall also be applicable:

(1) In case at any time the Corporation shall grant (1) any rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or (2) any obligations or any shares of stock of the Corporation which are convertible into, or exchangeable for, Common Stock (any of such obligations or shares of stock being hereinafter referred to as "Convertible Securities") whether or not such rights or options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such rights or options or upon conversion or exchange of such Convertible Securities (determined by dividing (x) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such rights or options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of such rights or options, plus, in the case of such rights or options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue of such Convertible Securities and upon the conversion or exchange thereof, by (y) the total maximum number of shares of Common Stock issuable upon the exercise of such rights or options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such rights or options) shall be less than the applicable Conversion Price with respect to the Series A Preferred Stock, Series B Preferred Stock and/or Series C Preferred Stock in effect immediately prior to the time of the granting of such rights or options, then the total maximum number of shares of Common Stock issuable upon the exercise of such rights or options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such rights or options shall (as of the date of granting of such rights or options) be deemed to have been

issued for such price per share. Except as provided in subsection (C)(e)(iii)(B) below, no further adjustments of the Conversion Price with respect to the Series A Preferred Stock, Series B Preferred Stock and/or Series C Preferred Stock shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such rights or options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

(2) In case the Corporation shall issue or sell (whether directly or by assumption in a merger or otherwise) any Convertible Securities, whether or not the rights to exchange or convert thereunder are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (x) the total amount of consideration received or receivable by the Corporation for the issuance or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (y) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the applicable Conversion Price with respect to the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall (as of the date of the issue or sale of such Convertible Securities) be deemed to be outstanding and to have been issued for such price per share, provided that (x) except as provided in subsection (C)(e)(iii)(B) below, no further adjustments of the conversion price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities, and (y) if any such issue or sale of such Convertible Securities is made upon exercise of any rights to subscribe for or to purchase or any option to purchase any such convertible Securities for which adjustments of the conversion price have been or are to be made pursuant to other provisions of this clause (2), no further adjustment of the conversion price shall be made by reason of such issue or sale.

(3) In case any shares of Common Stock or Convertible Securities or any rights or options to purchase any such Common Stock or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, without deducting therefrom any expenses incurred or any underwriting commissions, discounts or concessions paid or allowed by the Corporation in connection

therewith. In case any shares of Common Stock or Convertible Securities or any rights or options to purchase any such Common Stock or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined by the board of directors of the Corporation, without deducting therefrom any expenses incurred or any underwriting commissions, discounts or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock or Convertible Securities or any rights or options to purchase such Common Stock or Convertible Securities shall be issued in connection with any merger or consolidation in which the Corporation is the surviving corporation, the amount of consideration therefor shall be deemed to be the fair value as determined by the board of directors of the Corporation of such portion of the assets and business of the non-surviving corporation or corporations as the board of directors shall determine to be attributable to such Common Stock, Convertible Securities, rights or options, as the case may be.

(4) If (x) the purchase price provided for in any right or option referred to in clause (1) of this subsection (C)(e)(iii)(A), or (y) the additional consideration, if any, payable upon the conversion or exchange of Convertible Securities referred to in clause (1) or clause (2) of this subsection (C)(e)(iii)(A), or (z) the rate at which any Convertible Securities referred to in clause (1) or clause (2) of this subsection (C)(e)(iii)(A) are convertible into or exchangeable for Common Stock, shall change at any time (other than under or by reason of provisions designed to protect against dilution), the Conversion Price then in effect hereunder shall forthwith be increased or decreased to such conversion price as would have obtained had the adjustments made upon the issuance of such rights, options or Convertible Securities been made upon the basis of (a) the issuance of the number of shares of Common Stock theretofore actually delivered upon the exercise of such options or rights or upon the conversion or exchange of such Convertible Securities, and the total consideration received therefor, and (b) the issuance at the time of such change of any such options, rights, or Convertible Securities then still outstanding for the consideration, if any, received by the Corporation therefor and to be received on the basis of such changed price; and on the expiration of any such option or right or the termination of any such right to convert or exchange such Convertible Securities, the Conversion Price then in effect hereunder shall forthwith be increased to such conversion price as would have obtained had the adjustments made upon the issuance of such rights or options or Convertible Securities been made upon the basis of the issuance of



the shares of Common Stock theretofore actually delivered (and the total consideration received therefor) upon the exercise of such rights or options or upon the conversion or exchange of such Convertible Securities. If the purchase price provided for in any right or option referred to in clause (1) of this subsection (C)(e)(iii)(A), or the rate at which any Convertible Securities referred to in clause (1) of this subsection (C)(e)(iii)(A) are convertible into or exchangeable for Common Stock, shall decrease at any time under or by reason of provisions with respect thereto designed to protect against dilution, then in case of the delivery of Common Stock upon the exercise of any such right or option or upon conversion or exchange of any such Convertible Security, the conversion price then in effect hereunder shall forthwith be decreased to such conversion price as would have obtained had the adjustments made upon the issuance of such right, option or Convertible Security been made upon the basis of the issuance of (and the total consideration received for) the shares of Common Stock delivered as aforesaid.

(B) In case the Corporation shall at any time subdivide its outstanding shares of Common Stock into a greater number of shares, the applicable Conversion Price for the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock in effect immediately prior to such subdivision shall be proportionately reduced, and conversely, in case the outstanding shares of Common Stock of the Corporation shall be combined into a smaller number of shares, the conversion price in effect immediately prior to such combination shall be proportionately increased.

(iv) Dividends or Distributions. In case the Corporation shall (x) declare a dividend upon the Common Stock payable in Common Stock (other than a dividend declared to effect a subdivision of the outstanding shares of Common Stock, as described in subsection (C)(e)(iii)(B) above) or Convertible Securities, or in any rights or options to purchase Common Stock or Convertible Securities, or (y) declare any other dividend or make any other distribution upon the Common Stock payable otherwise than out of earnings or earned surplus, then thereafter each holder of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock upon the conversion thereof will be entitled to receive the number of shares of Common Stock into which such Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock have been converted, and, in addition and without payment therefor, each dividend described in clause (x) above and each dividend or distribution described in clause (y) above which such holder would have received by way of dividends or distributions, if continuously since such holder became the record holder of such Series A Preferred Stock, Series B Preferred Stock

or Series C Preferred Stock, such holder (a) had been the record holder of the number of shares of Common Stock then received, and (b) had retained all dividends or distributions in stock or securities (including Common Stock or Convertible Securities, and any rights or options to purchase any Common Stock or Convertible Securities) payable in respect of such Common Stock or in respect of any stock or securities paid as dividends or distributions and originating directly or indirectly from such Common Stock. For the purposes of the foregoing a dividend or distribution other than in cash shall be considered payable out of earnings or earned surplus only to the extent that such earnings or earned surplus are charged an amount equal to the fair value of such dividend or distribution as determined by the board of directors of the Corporation.

(v) Reorganization or Reclassification. If any capital reorganization or reclassification of the capital stock of the Corporation shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization or reclassification, lawful and adequate provisions shall be made whereby each holder of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall thereupon have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such Common Stock immediately theretofore receivable upon such conversion had such reorganization or reclassification not taken place, and in any such case appropriate provisions shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including without limitation provisions for adjustments of the Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights.

(vi) Corrective Actions. If any event occurs as to which in the opinion of the board of directors of the Corporation the other provisions of subsection (C)(e)(iii) are not strictly applicable or if strictly applicable would not fairly protect the rights of the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock in accordance with the essential intent and principles of such provisions, then the board of directors shall make an adjustment in the application of such provisions, in accordance with such essential intent and principles, so as to protect such rights as aforesaid.

(vii) Notice of Conversion Price Adjustment. In each case of an adjustment of the Conversion Price with respect to the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, the Corporation shall give written notice thereof, by first-class mail, postage prepaid, addressed to the registered holders of the applicable Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, at the addresses of such holders as shown on the books of the Corporation, which notice shall state the Conversion Price resulting from such adjustment and the increase or decrease, if any, in the number of shares receivable at such price upon the conversion of the applicable Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

(viii) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion, but, instead of any fraction of a share which would otherwise be issuable, the Corporation shall pay a cash adjustment in respect of such fraction in an amount equal to the same fraction of the market price per share of Common Stock as of the close of business on the day of conversion. "Market Price" shall mean if the Common Stock is traded on a securities exchange or on The Nasdaq National Market, the closing price of the Common Stock on such exchange or The Nasdaq National Market, or, if the Common Stock is otherwise traded in the over-the-counter market, the closing bid price, in each case averaged over a period of 20 consecutive business days prior to the date as of which "market price" is being determined. If at any time the Common Stock is not traded on an exchange or The Nasdaq National Market, or otherwise traded in the over-the-counter market, the "market price" shall be deemed to be the higher of (x) the book value thereof as determined by any firm of independent public accountants of recognized standing selected by the board of directors of the Corporation as of the last day of any month ending within 60 days preceding the date as of which the determination is to be made, or (y) the fair value thereof determined in good faith by the board of directors of the Corporation as of a date which is within 15 days of the date as of which the determination is to be made.

(ix) 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 subsection (C)(e) and in the taking of all such action as may be necessary or appropriate in order to protect the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock against impairment.

(x) 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 any outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the exercise of all such Series A Preferred Stock, Series B Preferred Stock and Series C 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, using its best efforts to obtain the requisite stockholder approval of any necessary amendment to the Corporation's certificate of incorporation.

(f) Notices of Record Date. In the event of 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 capital reorganization of the Corporation, any reclassification or recapitalization of the Corporation's capital stock, any consolidation or merger with or into another corporation, any transfer of all or substantially all of the assets of the Corporation, any dissolution, liquidation or winding up of the Corporation or 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, the Corporation shall mail to each holder of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, at least ten (10) business days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right. Any notice required by the provisions of this Article 5 to be given to the holders of shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be made in accordance with the Series C Convertible Preferred Stock Purchase Agreement among the Corporation and the holders of the Series C Preferred Stock.

#### ARTICLE 6.

In furtherance, and not in limitation of the powers conferred by statute, the board of directors is expressly authorized to make, amend, alter, change, add to or repeal bylaws of this Corporation, without any action on the part of the stockholders. The bylaws made by the directors may be amended, altered, changed, added to or repealed by the stockholders. Any specific provision in the bylaws regarding amendment thereof shall be controlling.

#### ARTICLE 7.

A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption

from liability is not permitted under the DGCL as the same exists or may hereafter be amended. Any repeal or modification of the foregoing provisions of this article by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

#### **ARTICLE 8.**

The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to any action or proceeding, whether criminal, civil or administrative or investigative, from and against all expenses, liabilities or damages by reason of the action in his or her official capacities or other action in another capacity taken by reason of the fact that he or she, his or her testator or intestate is or was a director, officer or employee of the Corporation or any predecessor of the Corporation or serves or served any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor of the Corporation.

IN WITNESS WHEREOF, the undersigned, the Chief Executive Officer and Secretary of Anulex Technologies, Inc., being duly authorized on behalf of Anulex Technologies, Inc., has executed this document this 24<sup>th</sup> day of July, 2006 and hereby certifies that this Third Amended and Restated Certificate of Incorporation amends and restates in its entirety the Second Amended and Restated Certificate of Incorporation and was duly adopted in accordance with the provisions of Sections 242 and 245 of the Delaware General Corporation Law.



Michael K. McCormick  
Chief Executive Officer and President



Matthew M. Burns  
Secretary