

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF
APTELA, INC.**

(Under Section 245 of the General Corporation Law of the State of Delaware)

APTELA, INC. (the "Company"), a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), does, by Howard Freidman, its Chief Executive Officer, hereby certify that:

- I. The original Certificate of Incorporation of the Company was filed with the Secretary of State of the State of Delaware on June 23, 2004 (the "Charter").
- II. This Amended and Restated Certificate of Incorporation restates the Charter by deleting from such Charter all of the provisions thereof and substituting in lieu of such provisions the text of the Amended and Restated Certificate of Incorporation set forth herein.
- III. Pursuant to Sections 141 and 245 of the DGCL, by unanimous written consent of the directors of the Company, the Board of Directors of the Company deemed it advisable and in the best interests of the Company to restate the Charter in its entirety as set forth in this Amended and Restated Certificate of Incorporation and directed that this Amended and Restated Certificate of Incorporation be submitted for consideration and action thereon by the stockholders of the Company.
- IV. Pursuant to Sections 228, 242 and 245 of the DGCL, by Action by Written Consent of the Stockholders of the Company, the holders of the requisite number of the outstanding shares of capital stock of the Company entitled to vote thereon voted in favor of, approved and adopted this Amended and Restated Certificate of Incorporation in its entirety.
- V. The text of this Amended and Restated Certificate of Incorporation was duly adopted by the Board of Directors and by the holders of a majority of the outstanding shares of capital stock of the Company entitled to vote thereon in accordance with the provisions of Sections 141, 228, 242 and 245 of the DGCL.
- VI. The text of the Charter is hereby amended and restated by this Amended and Restated Certificate of Incorporation, to read in full as follows:

FIRST: The name of the corporation (herein referred to as the Company') is:
Aptela, Inc.

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

*State of Delaware
Secretary of State
Division of Corporations
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THIRD: The purposes of the Company are to engage in, promote, conduct and carry on any lawful acts or activities for which corporations may be organized under the Delaware General Corporation Law (the "DGCL").

FOURTH: The total number of shares of stock which the Company shall have authority to issue is 52,229,731 shares, of which 37,000,000 shares, par value \$0.001 per share, are designated "Common Stock" and 15,229,731 shares, par value \$0.001 per share, are designated "Preferred Stock."

The designations, preferences, privileges and powers and relative, participating, optional or other special rights and qualifications, limitations or restrictions of the above classes of capital stock shall be as follows:

SECTION A

Preferred Stock

1. Designation of Series: Rank.

(a) 8,384,276 shares of Preferred Stock are hereby designated as Series A-1 Convertible Preferred Stock (the "Series A Stock") and 6,845,455 shares of the Preferred Stock are hereby designated as Series B Convertible Preferred Stock (the "Series B Stock").

(b) Except as set forth below, the Series A Stock and Series B Stock shall rank *pari passu* with each other in all respects. The Preferred Stock shall rank senior to the Common Stock and any other capital stock of the Company ranking junior to the Preferred Stock upon liquidation, dissolution, redemption and with respect to dividends (the "Junior Stock").

2. Definitions.

(a) "Board" shall mean the Company's Board of Directors.

(b) "Conversion Price" shall mean the Series A-1 Conversion Price or the Series B Conversion Price, as applicable.

(c) "Dividend Rate" shall mean, with respect to the Preferred Stock, nine percent (9%) of the applicable Original Issue Price.

(d) "Investor Rights Agreement" shall mean that certain Amended and Restated Investor Rights Agreement, dated as of the Series B Original Issue Date, by and among the Company and the investors and stockholders who are parties thereto, as the same may be amended from time to time.

(e) "Liquidation Event" shall mean (1) the liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary, or (2) a Sale Transaction.

(f) "Original Issue Date" shall mean the Series A-1 Original Issue Date or the Series B Original Issue Date, as applicable.

(g) “Original Issue Price” shall mean the Series A-1 Stock Original Issue Price or the Series B Original Issue Price, as applicable,

(h) “Qualified Initial Public Offering” shall mean an underwritten public offering of Common Stock registered under the Securities Act, the aggregate proceeds of which to the Company and/or the selling stockholders (if any) are at least Thirty Million Dollars (\$30,000,000) and in which the public offering price per share (before deducting any underwriting fees or selling commissions) is not less \$2.20, as adjusted for Recapitalizations.

(i) “Recapitalization” shall mean any stock dividend, combination, stock split, recapitalization or similar event.

(j) “Sale Transaction” shall mean either: (1) the closing of a merger or consolidation of the Company with or into any other entity or an acquisition of the Company’s outstanding capital stock, in each case in which the total number of outstanding shares of Common Stock (after the conversion of all shares of capital stock convertible into Common Stock) immediately before such merger, consolidation or acquisition do not, immediately after such merger, consolidation or acquisition, constitute at least a majority of the voting securities of the surviving entity of such merger or consolidation (or, if the surviving entity is a wholly owned subsidiary, its parent), in the case of a merger or consolidation, or the Company, in the case of an acquisition of stock; or (2) the closing of the sale or other disposition of all or substantially all of the assets of the Company (including an exclusive license of all or substantially all of the Company’s intellectual property); provided that a Sale Transaction shall not include (x) any consolidation or merger effected exclusively to change the domicile of the Company, or (y) any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof.

(k) “Securities Act” shall mean the Securities Act of 1933, as amended.

(l) “Series A-1 Conversion Price” shall be equal to \$0.30 as of the filing of this Amended and Restated Certificate of Incorporation and is subject to adjustment as provided herein.

(m) “Series A-1 Original Issue Date” shall mean the first date a share of Series A Stock is issued,

(n) “Series A-1 Original Issue Price” shall mean \$0.586217 per share (as appropriately adjusted for any Recapitalization) with respect to such shares after the Series A-1 Original Issue Date.

(o) “Series B Conversion Price” shall initially be equal to the Series B Original Issue Price and is subject to adjustment as provided herein.

(p) “Series B Original Issue Date” shall mean the first date a share of Series B Stock is issued.

(q) “Series B Original Issue Price” shall mean \$0.55 per share (as appropriately adjusted for Recapitalizations with respect to such shares after the Series B Original Issue Date).

(r) “Shares Deemed Outstanding” shall mean, on any given date, the number of shares of Common Stock issued and outstanding plus the number of shares of Common Stock issuable upon (i) conversion of all outstanding shares of Preferred Stock and (ii) conversion or exercise of all outstanding derivative securities (including those convertible into Preferred Stock and assuming (x) all options reserved for grant pursuant to any stock incentive plan then in effect have been issued and (y) all derivative securities are exercisable for their full face amount irrespective of any restrictions in effect on their exercise).

(s) “Subsidiary” shall mean any corporation at least fifty percent (50%) of whose outstanding voting stock shall at the time be owned directly or indirectly by the Company or by one or more Subsidiaries.

3. Dividends.

(a) The holders of the then outstanding Preferred Stock shall be entitled to receive, prior and in preference to the holders of Junior Stock, out of any funds and assets of the Company legally available therefor, cumulative annual dividends at the Dividend Rate, which dividends shall be payable in accordance with paragraph 3(b). Such dividends shall accrue on each share of Preferred Stock from the applicable Original Issue Date, and shall accrue from day to day, whether or not earned or declared and whether or not there shall be net assets or profits of the Company legally available for the payment of such dividends. If such dividends are payable in accordance with paragraph 3(b), but have not been paid in full, the deficiency shall first be fully paid before any dividend or other distribution shall be paid on or declared and set apart for the Junior Stock. No dividends shall be declared or paid with respect to the Junior Stock unless and until an amount has been set aside for payment of accrued dividends payable upon a redemption of the Preferred Stock as set forth herein.

(b) All accrued and unpaid dividends on shares of Preferred Stock will be payable only upon the redemption of the Preferred Stock pursuant to paragraph 7 below and not under any other circumstance. All dividends paid pursuant to this paragraph 3 shall be paid in cash.

(c) The holders of Preferred Stock shall be entitled to share ratably in any dividends if and when declared and paid on any Junior Stock in an amount per share equal to the amount of the dividend proposed to be paid on a share of Junior Stock multiplied by the number of shares of Common Stock issuable upon conversion of the Preferred Stock on the record date for such dividend.

4. Liquidation Rights.

(a) Upon the occurrence of a Liquidation Event, after payment or provision for payment of the debts and other liabilities and obligations of the Company, the holders of each share of Preferred Stock then outstanding shall be entitled to be paid out of the net assets of the Company available for distribution to its stockholders or the consideration received in such

Liquidation Event (the "Available Assets"), before any payment or declaration and setting apart for payment of any amount shall be made in respect of the Junior Stock, an amount equal to the applicable Original Issue Price for such share of Preferred Stock (the "Preferred Liquidation Preference").

If the Available Assets are insufficient to pay the full Preferred Liquidation Preference, then no amount shall be distributed to stockholders in respect of shares of Junior Stock and the Available Assets shall be distributed *pari passu* and ratably among the holders of the Preferred Stock in proportion to the full Preferred Liquidation Preference that each such holder is otherwise entitled to receive.

(b) After payment in full of the Preferred Liquidation Preference, any remaining Available Assets shall be distributed ratably among the holders of shares of Common Stock and the holders of Preferred Stock (determined as if the holders of Preferred Stock had converted such stock to Common Stock using the then applicable Conversion Price).

(c) Notwithstanding anything to the contrary contained in the foregoing, in the event of a Sale Transaction, by affirmative vote or written consent of the holders of at least a majority of the Preferred Stock then outstanding, voting together as a single class on an as-converted basis (the "Preferred Majority") such holders may elect, on behalf of all (but not less than all) of the holders of shares of Preferred Stock (1) to waive the right to treat such Sale Transaction as a Liquidation Event and (2) to receive, in lieu of the benefits of a Liquidation Event pursuant to the provisions of this paragraph 4, the benefits of the provisions of paragraph 6(i). Such election shall be binding upon all holders of shares of Preferred Stock. Such election shall be ineffective unless written notice of such election is delivered to the Company no later than five (5) days before the closing of such Sale Transaction or the Company and the holders of a majority of the Preferred Stock waive such notice requirement.

(d) If any assets of the Company distributed to stockholders in connection with a Liquidation Event are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board, except that any securities to be distributed to stockholders in connection with a Liquidation Event shall be valued as follows, unless otherwise determined by the Board, including a majority of the directors designated by the holders of Preferred Stock:

(1) The method of valuation of securities not subject to investment letter or other similar restrictions on free marketability shall be as follows:

(A) if the securities are then traded on a national securities exchange, the Nasdaq National Market System (or a similar national quotation system) or the Nasdaq Small Cap Market, then the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the thirty (30)-day period ending three (3) days prior to the distribution;

(B) if actively traded over-the-counter, then the value shall be deemed to be the average of the closing bid prices over the thirty (30)-day

period ending three (3) days prior to the closing of such merger, consolidation or sale; and

(C) if there is no active public market then the value shall be the fair market value thereof, as determined in good faith by the Board.

(2) The method of valuation of securities subject to investment letter or other similar restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in (A), (B) or (C) of paragraph (1) to reflect the approximate fair market value thereof, as determined in good faith by the Board.

5. Voting Rights.

(a) Preferred Stock. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock shall be entitled to vote on all matters upon which holders of Common Stock have the right to vote, and with respect to such vote shall be entitled to notice of any stockholders meeting in accordance with the Bylaws of the Company, and shall be entitled to a number of votes equal to the largest number of full shares of Common Stock into which such shares of Preferred Stock could then be converted, pursuant to the provisions of paragraph 6 hereof. Such number of votes shall be determined, in each case, at the record date for the determination of stockholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited.

(b) Election of Directors. The number of directors of the Company shall initially be seven, subject to any further restrictions as may be set forth in this Certificate of Incorporation.

(1) The holders of Preferred Stock, voting as a separate class, shall be entitled to elect three members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director(s).

(2) The holders of Common Stock and the holders of Preferred Stock, voting together as a single class on an as-if-converted basis, shall be entitled to elect all remaining members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such director(s).

(c) General. Except as otherwise expressly provided herein or to the extent class or series voting is otherwise required by law or agreement, the holders of Preferred Stock and Common Stock shall vote together as a single class and not as separate classes on all matters.

6. Conversion.

The holders of the Preferred Stock shall have the following conversion rights:

(a) Right to Convert.

(1) Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Company or any transfer agent for Common Stock, into fully paid and nonassessable shares of Common Stock, at the applicable Conversion Price then in effect.

(2) Before any holder of shares of Preferred Stock shall be entitled to convert the same into shares of Common Stock, the holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or of any transfer agent for the Common Stock and shall give written notice to the Company at such office that such holder elects to convert the same and shall state therein the number of shares of Preferred Stock being converted and the name or names in which the certificate or certificates for shares of Common Stock are to be issued at least fifteen (15) days prior to the date of such conversion unless such notice requirement is waived by the Company. Thereupon the Company shall promptly issue and deliver at such office to such holder or to the nominee or nominees of such holder a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled.

(3) Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender for conversion of the shares of Preferred Stock, 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.

(b) Automatic Conversion.

(1) Each share of Preferred Stock which is outstanding immediately prior to the closing of a Qualified Initial Public Offering shall automatically, and without any action on the part of the holder thereof or the Company, be converted, effective immediately prior to the closing of a Qualified Initial Public Offering, on the same basis and at the same Conversion Price as if each holder thereof had properly exercised such holder's right to convert on the day preceding the Closing Date.

(2) At the election of holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a single class on an as-converted basis, upon not less than fifteen (15) days notice to the Company, all outstanding shares of Preferred Stock shall automatically, and without any additional action on the part of the holders thereof or the Company, be converted, effective as of the close of business on the date specified in such notice (which date shall be not more than sixty (60) days following the date of such notice), on the same basis and at the same Conversion Price as if each holder thereof had properly exercised such holder's right to convert on the day preceding such date.

(3) The Company shall have no obligation to issue and deliver to any holder of Preferred Stock a certificate for the number of shares of Common Stock to which such holder shall otherwise be entitled upon conversion hereunder until such time as such holder has surrendered such holder's certificate or certificates for such holder's Preferred Stock, duly endorsed, at the office of the Company or any transfer agent for the Common Stock or the holder notifies the Company that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection therewith. All rights with respect to shares of Preferred Stock outstanding on the date of conversion shall forthwith after such date terminate, except only the right of the holders of such shares to receive Common Stock upon surrender of their certificates for Preferred Stock.

(c) Conversion Price.

(1) Each share of Series A Stock shall be convertible into the number of shares of Common Stock that results from dividing the Series A-1 Original Issue Price by the Series A-1 Conversion Price in effect at the time of conversion.

(2) Each share of Series B Stock shall be convertible into the number of shares of Common Stock that results from dividing the Series B Original Issue Price by the Series B Conversion Price in effect at the time of conversion.

(d) Forfeiture of Dividends on Conversion. In the event of a conversion of Preferred Stock into Common Stock pursuant to paragraphs 6(a) or 6(b), any accrued but unpaid dividends (whether or not declared) on the shares of Preferred Stock being converted shall be forfeited.

(e) Adjustment for Stock Splits and Combinations. If the Company shall at any time or from time to time after the applicable Original Issue Date effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the outstanding Preferred Stock, each applicable Conversion Price then in effect immediately before that subdivision shall be proportionately decreased; conversely, if the Company shall at any time or from time to time after the applicable Original Issue Date reduce the outstanding shares of Common Stock by combination or otherwise without a corresponding combination of the outstanding shares of Preferred Stock, each applicable Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph 6(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Certain Dividends and Distributions. In the event the Company at any time or from time to time after the Series B Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the applicable Conversion Price for the Preferred Stock then in effect shall be decreased as of the time of such issuance or, in the event such a record date shall have been

fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price for each of the Preferred Stock then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date; and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the applicable Conversion Price for the Preferred Stock shall be recomputed accordingly as of the close of business on such record date and thereafter the applicable Conversion Price for each series of the Preferred Stock shall be adjusted pursuant to this paragraph 6(f) as of the time of actual payment of such dividends or distributions.

(g) Adjustments for Other Dividends and Distributions. In the event the Company at any time or from time to time after the Series B Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Company other than shares of Common Stock, then and in each such event provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Company that they would have received had such shares of Preferred Stock been converted into Common Stock on the date of such event and had thereafter, during the period from the date of such event to and including date of conversion, retained such securities receivable by them as aforesaid during such period giving application to all adjustments called for during such period under this paragraph 6 with respect to the rights of the holders of Preferred Stock.

(h) Adjustment for Reclassification Exchange or Substitution. If the Common Stock issuable upon the conversion of the Preferred Stock shall be changed into the same or different number of shares of any class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization or Sale Transaction provided for elsewhere in this paragraph 6), then and in each such event the holder of each share of Preferred Stock shall have the right thereafter to convert such share into the kind and amounts of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change, by holders of the numbers of shares of Common Stock into which such shares of Preferred Stock might have been converted immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein.

(i) Adjustment for Reorganization, Mergers, Consolidations or Sales of Assets. If at any time or from time to time there shall be a capital reorganization of the Common Stock (other than a subdivision, combination, reclassification or exchange of shares provided for

elsewhere in this paragraph 6) or a Sale Transaction to which the provisions of paragraph 4 hereof do not apply, and if as a part of such reorganization or Sale Transaction the Preferred Stock is not cancelled, exchanged, redeemed or otherwise retired, then provision shall be made so that each holder of shares of Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of the Company, or of the successor corporation resulting from such Sale Transaction to which a holder of that number of shares of Common Stock deliverable upon conversion of such shares of Preferred Stock would have been entitled on such capital reorganization or Sale Transaction. In any such case, appropriate adjustment shall be made in the application of the provisions of this paragraph 6 with respect to the rights of the holders of the Preferred Stock after the reorganization or Sale Transaction to the end that the provisions of this paragraph 6 (including adjustment of the applicable Conversion Price then in effect and the number of shares purchasable upon conversion of the Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(j) Sale of Shares Below Conversion Price.

(1) If at any time or from time to time after the Series B Original Issue Date, the Company shall issue or sell, or is deemed by the express provisions of paragraph (3) of this paragraph 6(j) to have issued or sold, Additional Shares of Common Stock, other than as a dividend as provided in paragraphs 6(f) or 6(g) above, and other than upon a subdivision or combination of shares of Common Stock as provided in paragraph 6(e) above, for a consideration per share less than the Conversion Price then in effect for a series of Preferred Stock then the applicable Conversion Price then in effect for such series of Preferred Stock shall be reduced as of the opening of business on the date of such issue or sale, to a price (calculated to the nearest cent) determined by multiplying the then applicable Conversion Price for such series of Preferred Stock by a fraction (A) the numerator of which shall be (i) the total number of shares of Shares Deemed Outstanding, plus (ii) the total number of shares of Common Stock that the aggregate consideration received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at the Conversion Price applicable to such series of Preferred Stock before this adjustment, and (B) the denominator of which shall be (i) the total number of shares of Shares Deemed Outstanding immediately prior to such issue or sale, plus (ii) the number of such Additional Shares of Common Stock so issued.

In the event that the number of shares of Additional Shares of Common Stock or the aggregate consideration for such number of Additional Shares of Common Stock cannot be ascertained at the time of issuance, such Additional Shares of Common Stock shall be deemed issued immediately upon the occurrence of the first event that makes such number of shares or the aggregate consideration, as applicable, determinable.

(2) For the purpose of making any adjustment in the applicable Conversion Price or number of shares of Common Stock purchasable on conversion of Preferred Stock as provided above, the consideration received by

the Company for any issue or sale of securities shall, for the purpose of this paragraph 6(j)(2):

(A) to the extent it consists of cash, be computed at the net amount of cash received by the Company after deduction of any underwriting or similar commissions, concessions or compensation paid or allowed by the Company in connection with such issue or sale;

(B) to the extent it consists of services or property other than cash, be computed at the fair value of such services or property as determined in good faith by the Board; and

(C) if Additional Shares of Common Stock, Convertible Securities (as hereinafter defined), or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration that covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities, rights or options.

(3) For the purpose of the adjustment provided in subsection (1) of this paragraph 6(j), if at any time or from time to time after the Series B Original Issue Date the Company shall issue any warrants, options or other rights for the purchase of, or stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being hereinafter referred to as "Convertible Securities"), then in each case, if the Effective Price (as hereinafter defined) of such warrants, options, rights or Convertible Securities shall be less than the then applicable Conversion Price for a series of Preferred Stock, the Company shall be deemed to have issued at the time of the issuance of such warrants, options, rights or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such warrants, options, rights or Convertible Securities, plus, in the case of such warrants, options, or rights, the minimum amounts of consideration, if any, payable to the Company upon exercise or conversion of such warrants, options, or rights. For purposes of the foregoing, "Effective Price" shall mean the quotient determined by dividing the total of all such consideration by such maximum number of Additional Shares of Common Stock. No further adjustment of the applicable Conversion Price adjusted upon the issuance of such warrants, options, rights or Convertible Securities shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such warrants, options, or rights or the conversion of any such Convertible Securities.

If any such warrants, options, or rights or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the applicable Conversion Price adjusted upon the issuance of such warrants, options, rights or Convertible Securities shall be readjusted to the applicable Conversion Price that would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such warrants, options, or rights, or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such warrants, options, and rights, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted plus the consideration, if any, actually received by the Company on the conversion of such Convertible Securities.

(4) For the purpose of the adjustment provided for in subsection (1) of this paragraph 6(j), if at any time or from time to time after the Series A-1 Original Issue Date the Company shall issue any rights or options for the purchase of Convertible Securities, then in each such case, if the Effective Price thereof is less than the current applicable Conversion Price of a series of Preferred Stock, the Company shall be deemed to have issued at the time of the issuance of such rights or options the maximum number of Additional Shares of Common Stock issuable upon conversion of the total amount of Convertible Securities covered by such rights or options and to have received as consideration for the issuance of such Additional Shares of Common Stock an amount equal to the amount of consideration, if any, received by the Company for the issuance of such rights or options, plus the minimum amounts of consideration, if any, payable to the Company upon the conversion of such Convertible Securities. For the purposes of the foregoing, "Effective Price" shall mean the quotient determined by dividing the total amount of such consideration by such maximum number of Additional Shares of Common Stock. No further adjustment of such Conversion Price adjusted upon the issuance of such rights or options shall be made as a result of the actual issuance of the Convertible Securities upon the exercise of such rights or options or upon the actual issuance of Additional Shares of Common Stock upon the conversion of such Convertible Securities.

The provisions of subsection (3) above for the readjustment of such applicable Conversion Price upon the expiration of rights or options or the rights of conversion of Convertible Securities, shall apply *mutatis mutandis* to the rights, options and Convertible Securities referred to in this subsection (4).

(k) Definition. The term "Additional Shares of Common Stock" as used herein shall mean all shares of Common Stock issued or deemed issued by the Company after the Series B Original Issue Date, whether or not subsequently reacquired or retired by the Company, other than:

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

(2) up to 6,327,958 shares of Common Stock (as appropriately adjusted for any Recapitalization) issued or deemed to be issued to employees, officers, directors, consultants or other persons performing services for the Company after the Series A-1 Original Issue Date (if issued solely because of any such person's status as an officer, director, employee, consultant or other person performing services for the Company and not as part of any offering of the Company's securities) pursuant to any stock option plan or stock purchase plan approved by the Board, including at least two directors elected solely by the holders of Preferred Stock;

(3) shares of Common Stock issued or issuable by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by paragraph 6(e) or paragraph 6(f) above;

(4) shares of Preferred Stock or Common Stock issued or issuable to financial institutions, commercial lenders or lessors in connection with commercial credit agreements, equipment financings or similar transactions, provided that such transaction, and the issuance of shares in connection therewith, has been approved by the (A) Board and (B) the holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a single class on an as converted basis;

(5) shares of Common Stock issued or issuable pursuant to the anti-dilution provisions contained in this Certificate of Incorporation;

(6) shares of Common Stock, Preferred Stock, options or Convertible Securities issued by the Company in any transaction exempted from the application of paragraph 6(j) by the holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a single class on an as-converted basis; and

(7) shares of Series B Stock (and Common Stock issuable upon conversion thereof) issued pursuant to the Series B Convertible Preferred Stock Purchase Agreement dated on or about the date that this Amended and Restated Certificate of Incorporation is filed with the Secretary of State of the State of Delaware.

(l) The application of paragraph 6(k) may be waived on behalf of all holders of Series A Stock by the holders of a majority of the then outstanding Series A Stock voting as a single class on an as-converted basis. The application of paragraph 6(k) may be waived on behalf of all holders of Series B Stock by the holders of a majority of the then outstanding Series B Stock voting as a single class on an as-converted basis.

(m) Certificate of Adjustment. In each case of an adjustment or readjustment of the applicable Conversion Price for the number of shares of Common Stock or other securities

issuable upon conversion of the Preferred Stock, the Company shall compute such adjustment or readjustment in accordance herewith and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Preferred Stock at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which adjustment or readjustment is based including a statement of (1) the consideration received or to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (2) the applicable Conversion Price at the time in effect for each series of Preferred Stock and (3) the number of shares of Common Stock and the type and amount, if any, or other property which at the time would be received upon conversion of the Preferred Stock.

(n) Notices of Record Date. In the event of (1) any taking by the Company of a record of the holders of any class or series of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution or (2) any reclassification or recapitalization of the capital stock of the Company, or any Sale Transaction or other Liquidation Event, the Company shall mail to each holder of Preferred Stock at least thirty (30) days prior to the record date specified therein (or such shorter period approved by the holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a single class on an as-converted basis), a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution, (B) the date on which any such reorganization, reclassification, Sale Transaction or Liquidation Event is expected to become effective and (C) the time, if any is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, Sale Transaction or Liquidation Event. The notice provisions set forth in this paragraph may be shortened or waived prospectively or retrospectively by the vote or written consent of the holders of at least a majority of the Preferred Stock voting on an as-converted to Common Stock basis.

(o) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of shares of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Company shall pay cash equal to the product of such fraction multiplied by the fair market value of one share of the Company's Common Stock on the date of conversion, as determined in good faith by the Board. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock usable upon such aggregate conversion.

(p) Reservation of Stock Issuable Upon Conversion. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock. As a condition precedent to the taking of any action which would cause an adjustment to the applicable Conversion Price, and subject to any approval of the Company's stockholders as may be required by the provisions hereof, the Company 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 in order that it may validly and legally issue the shares of its Common Stock issuable based upon such adjusted applicable Conversion Price.

(q) Notices. Any notice required by the provisions of this paragraph 6 to be given to the holder of shares of Preferred Stock shall be deemed given when received by such holder after the same has been sent by means of certified or registered mail, return receipt requested, postage prepaid, by a reputable overnight courier or messenger for hand delivery and addressed to each holder of record at such holder's address appearing on the books of the Company.

(r) Payment of Taxes. The Company will pay all taxes and other governmental charges (other than taxes measured by the revenue or income of the holders of Preferred Stock) that may be imposed in respect of the issue or delivery of shares of Common Stock upon conversion of the shares of Preferred Stock.

7. Redemption.

(a) Preferred Stock Redemption. Subject to the terms and conditions of this paragraph 7, the Company shall, upon receiving a written request (a "Redemption Notice"), at any time on or after the fifth anniversary of the Series B Original Issue Date, for the redemption of the outstanding shares of Preferred Stock under this paragraph 7 signed by the holders of a majority of the then outstanding shares of Preferred Stock voting as a single class on an as-converted-to-Common-Stock basis, redeem any such outstanding shares of Preferred Stock (the "Redemption Shares") in three equal annual installments beginning thirty (30) calendar days from the date of the Redemption Notice and ending on the date two years after such date (each such date, a "Redemption Date"), in accordance with the procedures set forth in this paragraph 7, from any source of funds legally available therefor at the applicable Redemption Price (as defined in paragraph 7(b)), until all outstanding Redemption Shares have been redeemed (or converted to Common Stock as provided in paragraph 6).

(b) Redemption Price. The redemption price (the "Redemption Price") for each share of Preferred Stock shall be an amount equal to the Original Issue Price applicable to such share of Preferred Stock, plus all accrued and unpaid dividends on each such share through the Redemption Date.

(c) Redemption Closings. In the event of any redemption in accordance with this paragraph 7, the Company shall purchase, and the holders of Preferred Stock as of the applicable Redemption Date (the "Redeeming Holders") shall sell, the Redemption Shares, (each, a "Redemption Payment") in equal proportions on each of the Redemption Date, the first anniversary of the Redemption Date and the second anniversary of the Redemption Date, (each, a "Redemption Closing"). The Company shall notify in writing all the holders in interest of the then outstanding Preferred Stock of the date and place of the each Redemption Closing at least seven (7) days prior to such Redemption Closing. At each Redemption Closing, the Redeeming Holders shall deliver to the Company certificates representing the Redemption Shares to be redeemed. If less than all of the shares represented by such certificate are redeemed, then the Company shall promptly issue a new certificate representing the unredeemed shares. The

Company shall deliver to each Redeeming Holder the Redemption Price for each share of Preferred Stock to be sold to the Company at the applicable Redemption Closing in cash (by cashier's or certified check or by wire transfer of immediately available funds to an account designated by such holder).

(d) Effect of Redemption. If a Redemption Notice shall have been duly given, and if on a Redemption Closing the applicable Redemption Price is either paid in full or made available for immediate payment in full, then notwithstanding that the certificates evidencing any of the shares of Preferred Stock so called for redemption shall not have been surrendered, all dividends with respect to such shares shall cease to accrue with respect to such redeemed shares after the date of the applicable Redemption Closing, such shares shall not thereafter be transferred on the Company's books and all rights of the holders of such shares with respect to such shares shall terminate after such Redemption Closing, except only the right of the holders to receive the applicable Redemption Price without interest upon surrender of their certificate(s) therefor. Notwithstanding anything to the contrary contained in the foregoing, if upon any Redemption Closing, the Company fails to remit any Redemption Payment when due, the Dividend Rate shall immediately increase to 15% such that from and after any missed Redemption Payment, the dividend with respect to such shares shall accrue at 15% per annum, cumulating on a daily basis until the Redemption Payment, including the increased dividend amount, is paid in full.

8. Restrictions and Limitations.

So long as any shares of Preferred Stock remain outstanding, the Company shall not, and shall not permit any Subsidiary to, without the vote or written consent of at least a majority of the then outstanding shares of Preferred Stock, voting on an as-if converted basis and as a single class:

(a) Amend, alter, repeal or waive any provision of, or add any provision to the Certificate of Incorporation or the Bylaws of the Company (whether by merger, consolidation or otherwise);

(b) Increase or decrease (other than as a result of conversion or redemption) the total number of authorized shares of Preferred Stock;

(c) Authorize or issue or obligate itself to issue any other equity security (including any security convertible into or exercisable for any equity security) senior to or on parity with the rights and preferences of the Preferred Stock;

(d) Effect a reclassification or recapitalization of the outstanding capital stock of the Company (whether by merger, consolidation or otherwise);

(e) Declare or pay dividends or make any distributions of cash, property or securities of the Company with respect to any shares of its Common Stock or any other capital stock (other than the Preferred Stock) of the Company or repurchase, redeem or otherwise acquire any of the outstanding capital stock of the Company, except for (A) the repurchase of unvested shares from employees, directors or consultants at cost (or the lesser of cost or fair market value), pursuant to the terms of agreements providing for the original issuance of such capital stock (or options to purchase capital stock), (B) the redemption of the Preferred Stock

pursuant to and as provided in paragraph 7 and (C) the acquisition by the Company of shares of its capital stock upon the exercise of a contractual right of first refusal;

(f) Effect any liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary, or seek, consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator for any assets of the Company;

(g) Increase or decrease the authorized size of the Board of Directors; or

(h) Effect a transfer of material assets of the Company by any means to any person other than a wholly owned Subsidiary of the Company, outside the ordinary course of business; or

(i) Effect a Sale Transaction or any series of transactions having the effect of a Sale Transaction.

9. No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Company shall be authorized to issue.

SECTION B

Common Stock

Each share of Common Stock shall have one vote upon all matters to be voted on by the holders of the Common Stock, and shall be entitled to participate equally in all dividends payable with respect to the Common Stock and to share ratably, subject to the rights and preferences of any series of Preferred Stock, in all assets of the Company in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, or upon any distribution of the assets of the Company.

FIFTH: The Company is to have perpetual existence.

SIXTH: The private property or assets of the stockholders of the Company shall not to any extent whatsoever be subject to the payment of the debts of the Company.

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

EIGHTH: None of the directors need be a stockholder or a resident of the State of Delaware.

NINTH: The liability of the directors of the Company for monetary damages shall be eliminated to the fullest extent under applicable law. No director shall be personally liable to the Company or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing sentence, a director shall be liable to the extent provided by applicable law (i) for breach of the director's duty of loyalty to the Company

or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit. All references in this paragraph to a director shall also be deemed to refer to any other person who, pursuant to a provision of the certificate of incorporation in accordance with subsection (a) of Section 141 of the DGCL, exercises or performs any of the powers or duties otherwise conferred or imposed upon the Board by the DGCL. No amendment to or repeal of this Article NINTH shall apply to or have any effect on the liability or alleged liability of any director of the Company for or with respect to any acts or omissions of such director occurring prior to such amendment.

TENTH: In furtherance and not in limitation of the rights, powers, privileges and discretionary authority granted or conferred by the DGCL or other statutes or laws of the State of Delaware, the Board is expressly authorized, subject to the restrictions set forth herein:

- A. To make, amend, alter or repeal the Bylaws of the Company;
- B. To authorize and cause to be executed mortgages and liens upon the real and personal property of the Company;
- C. To set apart out of any funds of the Company available for dividends, a reserve or reserves for any proper purpose and to reduce any such reserve in the manner in which it was created; and
- D. To adopt from time to time Bylaw provisions with respect to indemnification of directors, officers, employees, agents and other persons as it shall deem expedient and in the best interests of the Company and to the extent permitted by law.

ELEVENTH: The books of the Company may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the Bylaws of the Company.

TWELFTH: Subject to the limitations and restrictions set forth herein, the Company reserves the right to amend, alter, change or repeal any provisions herein contained, in the manner now or hereafter prescribed by statute, and all rights, powers, privileges and discretionary authority granted or conferred herein upon stockholders or directors are granted subject to this reservation.

THIRTEENTH: Subject to the provisions hereof, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Company (voting together as a single class on an as-if-converted basis).

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IN WITNESS WHEREOF, the Company has caused this Amended and Restated Certificate of Incorporation to be signed and executed in its corporate name by Howard Freidman, its Chief Executive Officer, who declares, affirms, acknowledges and certifies under the penalties of perjury, that this is his free act and deed and that the facts stated herein are true as of the 26th day of January, 2007.

Aptela, Inc.

By: /s/ Howard Freidman
Howard Freidman, Chief Executive Officer

(Signature Page to Amended and Restated
Certificate of Incorporation of Aptela, Inc.)