

## PATENT ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	CHANGE OF NAME
CONVEYING PARTY DATA	
Name	Execution Date
MaXXan Systems, Inc.	01/17/2007
RECEIVING PARTY DATA	
Name:	CipherMax, Inc.
Street Address:	14300 Cornerstone Village Drive
Internal Address:	Suite 421
City:	Houston
State/Country:	TEXAS
Postal Code:	77014
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	10117638
CORRESPONDENCE DATA	
Fax Number:	(512)322-8383
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	512-322-2500
Email:	apatent@bakerbotts.com
Correspondent Name:	Baker Botts LLP (069099.0113)
Address Line 1:	98 San Jacinto Blvd.
Address Line 2:	Suite #1500
Address Line 4:	Austin, TEXAS 78701
NAME OF SUBMITTER:	Todd Rosson
Total Attachments: 20 source=Ciphermax Merger Document#page1.tif source=Ciphermax Merger Document#page2.tif source=Ciphermax Merger Document#page3.tif source=Ciphermax Merger Document#page4.tif	

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# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "MAXXAN SYSTEMS, INC.", CHANGING ITS NAME FROM "MAXXAN SYSTEMS, INC." TO "CIPHERMAX, INC.", FILED IN THIS OFFICE ON THE EIGHTEENTH DAY OF JANUARY, A.D. 2007, AT 1:22 O'CLOCK P.M.

3191155 8100

070475320



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5622301

DATE: 04-25-07

PATENT

REEL: 019691 FRAME: 0080

**SIXTH AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
MAXXAN SYSTEMS, INC.**

MaXXan Systems, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of this corporation is MaXXan Systems, Inc. and that the original Certificate of Incorporation was filed on March 23, 2000. The corporation was originally incorporated under the name MakeSans Systems, Inc.

2. Pursuant to Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, this Sixth Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Fifth Amended and Restated Certificate of Incorporation, as amended, of this corporation as herein set forth in full:

ARTICLE I

NAME

The name of this corporation (hereinafter, the "Corporation") is CipherMax, Inc.

ARTICLE II

REGISTERED OFFICE

The address of the registered office of the Corporation in the State of Delaware is Incorporating Services, Ltd., 3500 South Dupont Highway, in the City of Dover, County of Kent. The name of the registered agent at that address is Incorporating Services, Ltd.

ARTICLE III

PURPOSES

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

ARTICLE IV

STOCK

A. Reclassification and Authorized Shares

Section 1. Reclassification. Effective upon the filing of this Sixth Amended and Restated Certificate of Incorporation, each share of Series A Preferred Stock outstanding as of immediately prior to such filing shall be reconstituted as 6.771542 shares of Common Stock,

each share of Series B Preferred Stock outstanding as of immediately prior to such filing shall be reconstituted as 3.385640 shares of Common Stock, each share of Series B-1 Preferred Stock outstanding as of immediately prior to such filing shall be reconstituted as 3.385820 shares of Common Stock, each share of Series C Preferred Stock outstanding as of immediately prior to such filing shall be reconstituted as 3.385444 shares of Common Stock, each share of Series D Preferred Stock outstanding as of immediately prior to such filing shall be combined and reconstituted as 0.054111 shares of Series A Preferred Stock and each share of Series E Preferred Stock outstanding as of immediately prior to such filing shall be combined and reconstituted as 0.030187 shares of Series A Preferred Stock the "Reclassification".

Section 2. No fractional shares of Common Stock or Series A Preferred Stock shall be issued upon the Reclassification. Whether or not fractional shares would have been issuable (but for the preceding sentence) upon the Reclassification shall be determined on the basis of the total number of shares of Common Stock or Series A Preferred Stock held by each holder and the aggregate number of shares of Common Stock or Series A Preferred Stock issuable upon Reclassification. In lieu of issuing fractional shares upon Reclassification, this Corporation shall pay holders as promptly as possible whenever funds are legally available therefor, the fair market value, as of the time of filing this Sixth Amended and Restated Certificate of Incorporation, as determined by this Corporation's Board of Directors, of the fractional shares that would be issued upon Reclassification but for the preceding sentence.

Before any holder of the Corporation's stock shall be entitled to receive a stock certificate evidencing shares of Common Stock or Series A Preferred Stock issued pursuant to Section 1 hereof, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Corporation. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder, a certificate or certificates for the number of shares of the Common Stock or Series A Preferred Stock to which such holder shall be entitled pursuant to Section 1 hereof.

All prices and share amounts throughout the remainder of this Sixth Amended and Restated Certificate of Incorporation reflect the prior occurrence of the Reclassification, and for purposes of any adjustment provided for in the remainder of the Sixth Amended and Restated Certificate of Incorporation, no adjustment shall be required or made in respect of the Reclassification.

Section 3. The Corporation is authorized to issue two classes of shares to be designated respectively "Preferred Stock" and "Common Stock." This Corporation is authorized to issue two series of Preferred Stock, of which one shall be designated Series A Preferred Stock (the "Series A Preferred Stock") and shall consist of 5,148,158 shares and one shall be designated Series B Preferred Stock (the "Series B Preferred Stock") and shall consist of 22,000,000 shares. The total number of shares of Preferred Stock authorized is 27,148,158. The total number of shares of Common Stock authorized is 4,083,614,269. The Preferred Stock shall have a par value of \$0.001 per share and the Common Stock shall have a par value of \$0.0005 per share.

B. Preferred Stock. The relative rights, preferences, restrictions and other matters relating to the Preferred Stock are as follows:

Section 1. Dividends, Rights of Preferred.

(a) The holders of Series B Preferred Stock shall be entitled to receive in any fiscal year, when, as and if, declared by the Board of Directors, out of any assets at the time legally available therefor, dividends in cash at the rate per annum of \$0.08 per share, as adjusted for any stock split, combination, consolidation, stock distributions, stock dividends or similar events with respect to such shares (collectively, "Recapitalization Events"), payable in preference and priority to any payment of any dividend on the Series A Preferred Stock and Common Stock (other than in shares of Common Stock) or other capital stock (the "Senior Preferred Dividend"). The right to such cash dividends on the Series B Preferred Stock shall not be cumulative, and no right shall accrue to holders of Series B Preferred Stock by reason of the fact that dividends on such shares are not declared in any prior year.

(b) The holders of Series B Preferred Stock shall be entitled to participate ratably with the holders of Series A Preferred Stock and Common Stock in any dividend or other distribution declared by the Board of Directors with respect to the Series A Preferred Stock and Common Stock (other than dividends or distributions payable in Common Stock or in securities of the Corporation and other than as otherwise adjusted in Section 4 hereof) such that the amount distributed to each holder of Common Stock and/or Series A Preferred Stock shall equal the amount obtained by multiplying the aggregate amount declared for such dividend (which such amount shall exclude the Senior Preferred Dividend) or other distribution by a fraction, the numerator of which shall be the sum of the number of shares of Common Stock then held by the holder and the aggregate number of shares of Common Stock into which the Senior Preferred Stock then held by the holder could be converted, and the denominator of which shall be the sum of the total number of shares of Common Stock then outstanding and the aggregate number of shares of Common Stock into which the Preferred Stock then outstanding could be converted.

(c) For purposes of this Section 1, unless the context otherwise requires, a "distribution" shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, payable other than in Common Stock, or the purchase or redemption of shares of the Corporation (other than purchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries on the termination of their employment or services pursuant to agreements providing for the right of said repurchase) for cash or property; *provided, however*, transfers of cash or property in connection with a Change of Control (as defined in Section 2(d) hereof) shall not be a "distribution" for purposes of this Section 1.

Section 2. Preference on Liquidation.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of the Series B Preferred Stock then outstanding shall be entitled to be paid, out of the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus or earnings, before any payment shall be made in respect of the Corporation's Series A Preferred Stock or Common Stock, an amount equal to (i) \$1.00 per share of Series B Preferred Stock (as adjusted for Recapitalization Events) plus (ii) all declared and unpaid dividends with respect to such series to the date fixed for distributions. If upon liquidation, dissolution or winding up of the Corporation, the assets of

the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of the Series B Preferred Stock the full aforesaid preferential amounts to which they shall be entitled pursuant to this Section 2(a), the holders of the Series B Preferred Stock shall share ratably in any distribution of assets in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

(b) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation and after payment to the holders of Series B Preferred Stock of the full amounts to which they are entitled pursuant to Section 2(a) above, the holders of shares of the Series A Preferred Stock then outstanding shall be entitled to be paid, out of the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus or earnings, before any payment shall be made in respect of the Corporation's Common Stock, an aggregate amount equal to (i) \$2.91366 per share of Series A Preferred Stock (as adjusted for Recapitalization Events) plus (ii) all declared and unpaid dividends with respect to such series to the date fixed for distributions. If upon liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of the Series A Preferred Stock the full aforesaid preferential amounts to which they shall be entitled pursuant to this Section 2(b), the holders of the Series A Preferred Stock shall share ratably in any distribution of assets after payment to the holders of Series B Preferred Stock of the full amounts to which they are entitled pursuant to Section 2(a) above in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

(c) After setting apart or paying in full the preferential amounts due the holders of Preferred Stock as set forth in Section 2(a) and Section 2(b) above, all remaining assets of the Corporation available for distribution to stockholders, if any, shall be distributed to the holders of Common Stock ratably in proportion to the number of shares of Common Stock then held by each stockholder.

(d) The merger, consolidation, reorganization (or similar transaction or series of related transactions) of the Corporation into or with another entity in which the stockholders of the Corporation immediately prior to such transaction do not own at least fifty percent (50%) of the voting securities of the surviving or continuing entity (or its parent) immediately after such transaction (other than bona fide equity financing transactions) in substantially the same proportions as existed immediately prior to such transaction, any transaction or series of related transactions to which the Corporation is a party in which in excess of fifty percent (50%) of the Corporation's voting power is transferred (other than bona fide equity financing transactions), or the sale, transfer or other disposition (but not including a transfer or disposition by pledge or mortgage to a bona fide lender) of all or substantially all of the assets of the Corporation (a "Change of Control"), shall be deemed to be a liquidation, dissolution or winding up of the Corporation as those terms are used in this Section 2 and shall entitle the holders of each series of Preferred Stock to receive at the closing of the Change of Control (and at each date after the closing on which additional amounts are paid to stockholders of the Corporation out of the proceeds of such change of Control) the greater of (A) the amount to which the holders of such series are entitled pursuant to Sections 2(a) and 2(b), or (B) the amounts the holders of such

series would be entitled to receive had all such holders converted the shares of such series of Preferred Stock into shares of Common Stock immediately prior to the closing of such Change of Control (in each case, after taking into account the application of this sentence with respect to all series of Preferred Stock).

(e) If any of the assets of the Corporation are to be distributed other than in cash under Section 2 or for any purpose, then the value of such assets shall be determined in good faith by the Board of Directors of the Corporation. The Corporation shall, on the date that the valuation is determined by the Board of Directors, give prompt written notice to each holder of shares of Preferred Stock of the valuation. Notwithstanding the foregoing, to the extent applicable, any securities to be distributed to the stockholders shall be valued as follows:

(i) If traded on a securities exchange or the Nasdaq Global Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange, or the last reported sale prices on the Nasdaq Global Market as the case may be, over the thirty (30) day period ending three (3) business days prior to the closing; and

(ii) If actively traded over-the-counter (other than on the Nasdaq Global Market), the value shall be deemed to be the average of the closing bid prices over the thirty (30) day period ending three (3) business days prior to the closing.

(f) In the event the Corporation shall propose to take any action of the type described in Section 2(d), the Corporation shall, at least twenty (20) days prior to the consummation of such action or twenty (20) days prior to any stockholders' meeting called to approve such action, whichever is earlier, give each holder of shares of Preferred Stock written notice (which may be given by e-mail) of the proposed action. Such written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash and property to be received by the holders of shares of Preferred Stock upon consummation of the proposed action and the proposed date of delivery thereof. If any material change in the facts set forth in the notice shall occur, the Corporation shall promptly give written notice (which may be given by e-mail) to each holder of shares of Preferred Stock of such material change.

(g) The Corporation shall not consummate any proposed action of the type described in Section 2(d) before the expiration of twenty (20) days after the mailing (or sending by e-mail) of the initial written notice or ten (10) days after the mailing (or sending by e-mail) of any subsequent written notice, whichever is later; provided, however, that any such 20-day or 10-day period may be shortened upon the written consent of (i) the holders of at least a majority of the outstanding shares of Series B Preferred Stock, voting as a separate class, and (ii) the holders of at least a majority of the outstanding shares of Series A Preferred Stock, voting as a separate class.

### Section 3. Voting Rights.

(a) Except as otherwise required by law or as set forth herein, each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could be converted on the record date for the vote or consent of stockholders. The holder of each share of Preferred Stock shall be



entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation and shall vote with holders of the Common Stock upon any matter submitted to a vote of the holders of Common Stock, except those matters required by law or this Certificate of Incorporation to be submitted to a class vote. Fractional votes by the holders of Preferred Stock shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with .5 being rounded up). Except as otherwise required by law or by this Sixth Amended and Restated Certificate of Incorporation, the holders of all series of Preferred Stock will vote together with the holders of Common Stock on all matters on an as-converted basis. Pursuant to Section 242(b)(2) of the General Corporation Law, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by an affirmative vote of the holders of a majority of the Common Stock and Preferred Stock voting together as a single class on an as-converted to Common Stock basis.

(b) Directors of the Corporation shall be elected as follows: (i) for so long as at least 1,000,000 shares of Series B Preferred Stock remain outstanding (as adjusted for Recapitalization Events) the holders of Series B Preferred Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board of Directors 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 directors; (ii) for so long as at least 500,000 shares of Series A Preferred Stock remain outstanding (as adjusted for Recapitalization Events) the holders of Series A Preferred Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board of Directors 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; (iii) the holders of Common Stock, voting as separate class, shall be entitled to elect two (2) members 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 directors, and (iv) the holders of Common Stock and Preferred Stock, voting together as a single class on an as-converted to Common Stock basis, shall be entitled to elect any other 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 directors.

(c) No person entitled to vote at an election for directors may cumulate votes to which such person is entitled, unless, at the time of such election, the Corporation is subject to Section 2115 of the California Corporations Code. During such time or times that the Corporation is subject to Section 2115(b) of the California Corporations Code, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder desires. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's

intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

During such time or times that the Corporation is subject to Section 2115(b) of the California Corporations Code, one or more directors may be removed from office at any time without cause by the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote for that director; *provided, however*, that unless the entire Board is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that director if voted cumulatively at an election which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected.

#### Section 4. Conversion Rights.

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

(a) 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 Corporation or any transfer agent for the Preferred Stock, into Common Stock as more fully described below. The number of shares of fully paid and nonassessable Common Stock into which each share of Preferred Stock may be converted shall be determined by dividing \$1.00, with respect to the Series A Preferred Stock (the "Original Series A Issue Price") or \$1.00, with respect to the Series B Preferred Stock (the "Original Series B Issue Price") by the Conversion Price (as hereinafter defined) in effect at the time of conversion in effect for each such share. The initial Conversion Price per share for the Series A Preferred Stock shall be 107.4635334 and the initial Conversion Price per share for shares of Series B Preferred Stock shall be 107.4635334, each as subject to adjustment as provided in Section 6 below. All references to the Conversion Price of a series of Preferred Stock shall mean the Conversion Price as so adjusted.

(b) Each share of Series B Preferred Stock shall automatically be converted into shares of Common Stock utilizing the then effective Conversion Price for each such share immediately upon the approval by vote or written consent of the holders of at least a majority of the Series B Preferred Stock then outstanding voting, as a separate class. Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock utilizing the then effective Conversion Price for each such share immediately upon the approval by vote or written consent of the holders of at least a majority of the Series A Preferred Stock then outstanding voting, as a separate class. In addition, each share of Preferred Stock shall automatically be converted into shares of Common Stock utilizing the then effective Conversion Price for each such share immediately upon the closing of the sale of the Corporation's securities following the effectiveness of a registration statement under the Securities Act of 1933, as amended, (other than a registration statement relating solely to the sale of securities to employees of the Corporation or a registration statement relating solely to a Securities and Exchange Commission Rule 145 transaction) pursuant to a firm commitment underwritten public offering with

aggregate gross proceeds to the Corporation of not less than Thirty Million Dollars (\$30,000,000) (before the deduction of underwriters commissions and expenses) (the "IPO").

(c) No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock, and any shares of Preferred Stock surrendered for conversion which would otherwise result in a fractional share of Common Stock (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be redeemed for the then fair market value thereof as determined by the Corporation's Board of Directors, payable as promptly as possible whenever funds are legally available therefor.

(d) Each holder of Preferred Stock who desires to voluntarily convert the same into shares of Common Stock pursuant to Section 4(a), shall surrender the certificate or certificates therefor at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that it elects to convert the same and shall state therein the name or names in which it wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to its nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which it shall be entitled as aforesaid, redeem as provided in Section 4(c) any shares of Preferred Stock surrendered for conversion which would otherwise result in a fractional share of Common Stock and pay any declared but unpaid dividends on the shares of Preferred Stock so converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of the Corporation's receipt of such notice, 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.

(e) Upon the automatic conversion into Common Stock of any or all series of Preferred Stock pursuant to Section 4(b), each share of Preferred Stock so converted shall automatically, and without any further action on the part of its holder, be converted into the number of shares of Common Stock into which it is convertible immediately prior to the effective date of such automatic conversion. Each holder of shares of Preferred Stock so converted shall surrender the certificate or certificates therefor at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office of the name or names in which it wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to its nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which it shall be entitled as aforesaid and redeem as provided in Section 4(c) any shares of Preferred Stock surrendered for conversion which would otherwise result in a fractional share of Common Stock. All rights with respect to the Preferred Stock converted pursuant to Section 4(b), including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon.

(f) The Corporation shall at all times reserve and keep available, out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of

Preferred Stock, the full number of shares of Common Stock deliverable upon the conversion of all Preferred Stock from time to time outstanding.

Section 5. Special Mandatory Conversions.

(a) Qualified Financing Special Mandatory Conversion to Common Stock.

(i) No Participation in First Qualified Financing Special Mandatory Conversion to Common Stock. In the event that any holder of shares of Series A Preferred Stock does not participate in the First Qualified Financing (as defined below) by purchasing in the aggregate, in such First Qualified Financing and within the time period specified by the Corporation (provided that the Corporation has given such holder at least five (5) days written notice of the First Qualified Financing, whether before or after the filing of this Sixth Amended and Restated Certificate of Incorporation), such holder's First Pro Rata Amount (as defined below), then each share of Series A Preferred Stock held by such holder shall automatically, and without any further action on the part of such holder, be converted into one share of Common Stock, effective upon the tenth (10th) day following the first closing of the Qualified Financing as set forth in the definitive financing purchase agreement. Upon such conversion, any shares of Preferred Stock so converted shall be cancelled and not subject to reissuance.

(ii) No Participation in Subsequent Qualified Financing Special Mandatory Conversion to Common Stock. In the event that any holder of shares of Series A Preferred Stock or Series B Preferred Stock does not participate in a Subsequent Qualified Financing (as defined below) by purchasing in the aggregate, in such Subsequent Qualified Financing and within the time period specified by the Corporation (provided that the Corporation has given such holder at least ten (10) days written notice of the Subsequent Qualified Financing), such holder's Subsequent Pro Rata Amount (as defined below), then each share of Preferred Stock held by such holder shall automatically, and without any further action on the part of such holder, be converted into shares of Common Stock at the applicable Preferred Stock Conversion Price in effect immediately prior to the consummation of such Qualified Financing, effective upon, subject to, and concurrently with, the consummation of the Qualified Financing. Upon such conversion, any shares of Preferred Stock so converted shall be cancelled and not subject to reissuance.

(iii) Upon conversion pursuant to Section 5(a)(i) or (ii), each holder of shares of Preferred Stock converted pursuant to this Section 5(a) shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 5(a). All rights with respect to the Preferred Stock converted pursuant to Section 5(a), including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. As soon as practicable

after the conversion pursuant to Section 5(a)(i) or (ii) and the surrender of the certificate or certificates for Preferred Stock so converted, the Corporation shall cause to be issued and delivered to such holder, or on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and redeem as provided in Section 4(b) any shares of Preferred Stock surrendered for conversion which would otherwise result in a fractional share of Common Stock.

(iv) The purchase of all or any portion of a holder's Pro Rata Amount by an affiliate of such holder shall be deemed to be a purchase by such holder for purposes of this Section 5(a) provided that no shares or securities shall be attributed to more than one entity or person.

(v) For purposes of this Section 5(a), the following definitions shall apply:

(A) "First Pro Rata Amount" shall mean, with respect to the First Qualified Financing: the number of Offered Securities calculated by multiplying the aggregate number of Offered Securities by a fraction, the numerator of which is equal to the number of shares of Preferred Stock on an as-converted basis immediately prior to the filing of this Sixth Amended and Restated Certificate of Incorporation, and the denominator of which is equal to 162,361,404.

(B) "First Qualified Financing" shall mean the sale of shares of Series B Preferred Stock pursuant to the definitive financing purchase agreement following the filing of this Sixth Amended and Restated Certificate of Incorporation.

(C) "Offered Securities" shall mean the Equity Securities of the Corporation designated by the Corporation's Board of Directors, for purchase by holders of outstanding shares of Preferred Stock in connection with either the First Qualified Financing or any Subsequent Qualified Financing, and offered to such holders.

(D) "Second Pro Rata Amount" shall mean, with respect to any Subsequent Qualified Financing the number of Offered Securities calculated by multiplying the aggregate number of Offered Securities by a fraction, the numerator of which is equal to the number of shares of Preferred Stock on an as-converted basis held by such holder, and the denominator of which is equal to the aggregate number of outstanding shares of Preferred Stock on an as-converted basis.

(E) "Subsequent Qualified Financing" shall mean any transaction involving the issuance or sale of Equity Securities of the Corporation following the last closing of the First Qualified Financing.

Section 6. Adjustment of Conversion Price. The Conversion Price for the Preferred Stock from time to time in effect shall be subject to adjustment from time to time as follows:

(a) If, after the date upon which any shares of Series B Preferred Stock are first issued, the Corporation shall at any time subdivide the outstanding shares of Common Stock without a corresponding subdivision of the outstanding shares of Preferred Stock, or shall issue a

stock dividend on its outstanding Common Stock without a corresponding dividend on its outstanding Preferred Stock, the Series A Conversion Price or the Series B Conversion Price, as applicable, in effect immediately prior to such subdivision or the issuance of such dividend shall be proportionately decreased, and in case the Corporation shall at any time combine the outstanding shares of Common Stock without a corresponding combination of the Preferred Stock, the Series A Conversion Price or the Series B Conversion Price, as applicable, in effect immediately prior to such combination shall be proportionately increased, effective at the close of business on the date of such subdivision, dividend or combination, as the case may be.

(b) If, after any shares of Series B Preferred Stock are first issued, the Common Stock issuable upon the conversion of the Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, merger, consolidation or otherwise (other than a Change of Control (as defined in Section 2(d)) or a subdivision or combination of shares or stock dividend provided for elsewhere in this Section 6), in any such event each holder of Preferred Stock shall thereafter have the right to convert such Preferred Stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, merger, consolidation or other change by holders of the maximum number of shares of Common Stock into which such shares of Preferred Stock could have been converted immediately prior to such recapitalization, reclassification, merger, consolidation or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 6 with respect to the rights of the holders of Preferred Stock after the capital reorganization to the end that the provisions of this Section 6 (including adjustment of the Conversion Prices of the Preferred Stock then in effect and the number of shares issuable upon conversion of the Preferred Stock) shall be applicable after that event and shall be as nearly equivalent as practicable.

(c) If, after any shares of Series B Preferred Stock are first issued, the Corporation issues Equity Securities without consideration or at a consideration per share less than the any Conversion Price then in effect on the date of and immediately prior to such issue (other than an issuance of stock or securities pursuant to Section 6(a) or the issuance of shares of Common Stock upon conversion of any Preferred Stock), then forthwith upon such issue or sale, the Conversion Price for the Series A Preferred Stock and Series B Preferred Stock, as applicable, shall be reduced to a price (calculated to the nearest hundredth of a cent) determined by multiplying each such applicable Conversion Price by a fraction:

(i) the numerator of which shall be an amount equal to the sum of  
(x) the number of shares of Common Stock outstanding immediately prior to such issue or sale,  
(y) the number of shares of Common Stock issuable upon conversion or exchange of any outstanding obligations or of any shares of capital stock of the Corporation outstanding immediately prior to such issue or sale and (z) the number of shares of Common Stock which could be purchased by the aggregate "consideration actually received" (as defined below) by the Corporation upon such issue or sale at the then existing applicable Conversion Price, and

(ii) the denominator of which shall be an amount equal to the sum of  
(x) the number of shares of Common Stock outstanding immediately prior to such issue or sale

and (y) the number of shares of Common Stock issuable upon conversion or exchange of any outstanding obligations or of any shares of capital stock of the Corporation outstanding immediately prior to such issue or sale and (z) the additional shares of Common Stock issued (or deemed issued) as and/or issuable upon conversion or exchange of the Equity Securities issued in such issuance or sale.

For purposes of this Section 6(c) and, with respect to the definition of “Equity Securities,” in Section 5, the following provisions shall be applicable:

(A) The term “Equity Securities” shall mean any shares of Common Stock, or any obligation, any share of stock or other security of the Corporation directly or indirectly convertible into or exchangeable for Common Stock except:

(i) shares of Common Stock or options to purchase Common Stock (as adjusted for Recapitalization Events) issued or granted to officers, directors, employees or consultants of the Corporation and its subsidiaries pursuant to any stock plan or arrangement approved by the Board of Directors;

(ii) shares issued in the event of a firm commitment underwritten public offering of the Corporation’s stock;

(iii) shares of Common Stock issued upon conversion of the Preferred Stock or pursuant to convertible securities outstanding as of the date hereof;

(iv) shares issued pursuant to a stock split of the Common Stock, a dividend to the Preferred Stock or the Common Stock or a distribution to the Preferred Stock or the Common Stock, in each case resulting in a Conversion Price adjustment pursuant to Section 6(a);

(v) shares of Common Stock, warrants or options to purchase Common Stock (as adjusted for Recapitalization Events) issued after the filing date hereof to banks or other sources of debt financing, to lessors of real or personal property, to vendors, to customers, in connection with corporate partnering agreements or in connection with business combinations, in all cases approved by the Board of Directors (including a majority of the directors elected by the Preferred Stock); and

(vi) shares as to which the holders of both (a) at least a majority of the Series B Preferred Stock, voting as a separate class, and (b) at least a majority of the outstanding Series A Preferred Stock, voting as a separate class, agree in writing that such shares shall not cause a conversion price adjustment.

(B) In the case of an issue or sale for cash of Equity Securities, the “consideration actually received” by the Corporation therefor shall be deemed to be the amount of cash received, before deducting therefrom any commissions or expenses paid by the Corporation.

(C) In case of the issuance (other than upon conversion or exchange of obligations or shares of stock of the Corporation) of Equity Securities for a consideration other

than cash or a consideration partly other than cash, the amount of the consideration other than cash received by the Corporation for such Equity Securities shall be deemed to be the value of such consideration as determined in good faith by the Board of Directors.

(D) In case of the issuance by the Corporation in any manner of any rights to subscribe for or to purchase shares of Common Stock, or any options for the purchase of shares of Common Stock or stock convertible into Common Stock, all shares of Common Stock or stock convertible into Common Stock to which the holders of such rights or options shall be entitled to subscribe for or purchase pursuant to such rights or options shall be deemed "outstanding" as of the date of the offering of such rights or the granting of such options, as the case may be, and the amount of the "consideration actually received" by the Corporation for such rights or options shall be deemed to be the total of (X) the amount of consideration received by the Corporation upon the issuance of such rights or options, as the case may be, plus (Y) the minimum aggregate consideration, if any, other than such rights or options, receivable by the Corporation upon exercise of such rights or options.

(E) In case of the issuance or issuances by the Corporation in any manner of any obligations or of any securities that shall be convertible into or exchangeable for Common Stock, all shares of Common Stock issuable upon the conversion or exchange of such obligations or securities shall be deemed issued as of the date such obligations or securities are issued, and the amount of the "consideration actually received" by the Corporation for such obligations or securities shall be deemed to be the total of (X) the amount of consideration received by the Corporation upon the issuance of such obligations or securities, as the case may be, plus (Y) the minimum aggregate consideration, if any, other than such obligations or securities, receivable by the Corporation upon such conversion or exchange.

(F) Notwithstanding Subsection (D) and Subsection (E) above, if such obligations or securities so convertible or exchangeable are issued in payment or satisfaction of any dividend upon any stock of the Corporation other than Common Stock, the amount of the "consideration actually received" by the Corporation upon the original issuance of such obligations or securities so convertible or exchangeable shall be deemed to be the value of such obligations or securities, as of the date of the adoption of the resolution declaring such dividend, as determined by the Board of Directors at or as of that date.

(G) No further adjustment of the Conversion Price of any series of Preferred Stock, as adjusted upon the issuance of any rights or options referred to in Subsection (D) above or upon the issuance of any obligations or securities referred to in Subsection (E) above, shall be made as a result of the actual issuance of the Common Stock underlying such rights, options, obligations or securities or otherwise upon the exercise of such rights or options or upon the conversion or exchange of such obligations or securities. On the expiration of any rights or options referred to in Subsection (D) above or the termination of any obligation or right of conversion or exchange referred to in Subsection (E) above, any change in the number of shares of Common Stock deliverable upon exercise of any rights or options referred to in Subsection (D) above or upon conversion or exchange of any obligations or securities referred to in Subsection (E) above, or any change in the minimum amount of consideration payable to the Corporation upon the exercise of any rights or options referred to in Subsection (D) above or upon the conversion or exchange of any obligation or securities referred to in Subsection (E)



above, the Series A Conversion Price or Series B Conversion Price then in effect shall forthwith be readjusted to such Series A Conversion Price or Series B Conversion Price as would have obtained had the adjustments made upon the issuance of such option, right or convertible or exchangeable obligations or securities been made upon the basis of (X) the delivery of only the number of shares of Common Stock actually delivered or to be delivered upon the exercise of such rights or options referred to in Subsection (D) above or upon the conversion or exchange of such obligations or securities referred to in Subsection (E) above and (Y) the payment to the Corporation of the consideration actually received or to be received upon the exercise of such rights or options referred to in Subsection (D) above or upon the conversion or exchange of such obligation or securities referred to in Subsection (E) above, as applicable; provided that no such readjustment shall apply to prior conversions of Preferred Stock.

(H) In the event this Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this Corporation or other persons or options or rights not referred to in this Section 6(c), then, in each such case, the holders of the Preferred Stock shall be entitled to the distributions provided for in Section 1 or Section 2 above, as appropriate, and no adjustment to the Conversion Price provided for in this Section 6 shall be applicable.

(d) Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price or Series B Conversion Price pursuant to this Section 6, this Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof, and shall prepare and furnish to each holder of Preferred Stock affected thereby a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment or readjustment, (B) Series A Conversion Price or Series B Conversion Price, as applicable, at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of his shares.

#### Section 7. Status of Converted Stock.

In the event any shares of Preferred Stock shall be converted pursuant to Section 4 or Section 5, the shares so converted shall be canceled and shall not be issuable by the Corporation, and this Sixth Amended and Restated Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

#### Section 8. Protective Covenants.

(a) So long as at least 1,000,000 shares (as adjusted for Recapitalization Events) of Series A Preferred Stock remain outstanding, the Corporation shall not (by merger, consolidation, reclassification or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, voting as a single class on an as-converted to Common Stock basis:

(i) authorize or designate or issue any equity security, including any security exercisable or convertible into an equity security, having rights, privileges or preferences senior to or on parity with the Series A Preferred Stock;

(ii) declare or pay a dividend on Common Stock or Preferred Stock, other than a dividend payable solely in shares of Common Stock resulting in a Conversion Price adjustment pursuant to Section 6(a);

(iii) redeem or repurchase shares of Common Stock or Preferred Stock, except repurchases of Common Stock held by employees, directors, consultants or other persons performing services for the Corporation pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment, at cost (or the lesser of cost or fair market value);

(iv) engage in a transaction which results in a liquidation, dissolution, winding up or Change of Control of the Corporation, as defined in Section 2(d) above;

(v) increase the number of authorized shares of Common Stock, Series A Preferred Stock or Series B Preferred Stock;

(vi) amend, alter or repeal any provision of the Certificate of Incorporation in a manner that results in a change to voting or other powers, preferences or other special rights, privileges or restrictions of the shares of Series A Preferred Stock;

(vii) increase or decrease the authorized number of members of the Board of Directors of the Corporation; or

(viii) amend, alter or repeal any provision of (A) this Sixth Amended and Restated Certificate of Incorporation (by merger, consolidation or otherwise) or (B) the Bylaws of this Corporation.

(b) So long as at least 3,000,000 shares (as adjusted for Recapitalization Events) of Series B Preferred Stock remain outstanding, the Corporation shall not (by merger, consolidation, reclassification or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series B Preferred Stock, voting as a single class on an as-converted to Common Stock basis:

(i) authorize or designate or issue any equity security, including any security exercisable or convertible into an equity security, having rights, privileges or preferences senior to or on parity with the Series B Preferred Stock;

(ii) declare or pay a dividend on Common Stock or Preferred Stock, other than a dividend payable solely in shares of Common Stock resulting in a Conversion Price adjustment pursuant to Section 6(a);

(iii) redeem or repurchase shares of Common Stock or Preferred Stock, except repurchases of Common Stock held by employees, directors, consultants or other persons

performing services for the Corporation pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment, at cost (or the lesser of cost or fair market value);

(iv) engage in a transaction which results in a liquidation, dissolution, winding up or Change of Control of the Corporation, as defined in Section 2(d) above;

(v) increase the number of authorized shares of Common Stock, Series A Preferred Stock or Series B Preferred Stock;

(vi) amend, alter or repeal any provision of the Certificate of Incorporation in a manner that results in a change to voting or other powers, preferences or other special rights, privileges or restrictions of the shares of Series B Preferred Stock;

(vii) increase or decrease the authorized number of members of the Board of Directors of the Corporation; or

(viii) amend, alter or repeal any provision of (A) this Sixth Amended and Restated Certificate of Incorporation (by merger, consolidation or otherwise) or (B) the Bylaws of this Corporation.

## ARTICLE V

### EXISTENCE

The Corporation is to have perpetual existence.

## ARTICLE VI

### POWERS; ELECTION OF DIRECTORS

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by this Sixth Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation. Election of directors need not be by written ballot, unless the Bylaws so provide.

## ARTICLE VII

### CONSENT TO CERTAIN REPURCHASES

To the extent the Corporation may be subject to Section 2115 of the California Corporations Code, Section 502 of the California Corporations Code shall not apply to any distribution made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by employees, officers, directors, consultants or other service providers

(i) pursuant to agreements providing for such repurchase at the original purchase price, (ii) at a purchase price not exceeding the fair market value of such Common Stock, or (iii) in connection with the exercise of a contractual right of first refusal entitling the Corporation to purchase the shares upon the terms offered by a third party.

## ARTICLE VIII

### DIRECTORS' LIABILITY AND INDEMNIFICATION OF AGENTS

A. To the fullest extent permitted by the Delaware General Corporation Law, a director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

B. To the fullest extent permitted by applicable law, the Corporation is also authorized to provide indemnification of (and advancement of expenses to) agents (and any other persons to which Delaware law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, votes of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders and others.

C. The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code for breach of duty to the Corporation and its stockholders through bylaw provisions or through agreements with the agents, or through stockholder resolutions, or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject, at any time or times that the Corporation is subject to Section 2115(b) of the California Corporations Code, to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code.

D. Any repeal or modification of any of the foregoing provisions of this Article VIII shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such repeal or modification.

## ARTICLE IX

### AMENDMENT

This Corporation reserves the right to amend or repeal any of the provisions contained in this Sixth Amended and Restated Certificate of Incorporation in any manner now or hereafter permitted by law, and the rights of the stockholders of this Corporation are granted subject to this reservation.

\* \* \* \* \*

3. The foregoing Sixth Amended and Restated Certificate of Incorporation was duly adopted by written consent of the stockholders of the Corporation in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Sixth Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this 17th day of January, 2007.

/s/ Ray Kao

Ray Kao, Chief Executive Officer