

## PATENT ASSIGNMENT

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| SUBMISSION TYPE:   | NEW ASSIGNMENT                   |
| NATURE OF CONVEYANCE:  | CHANGE OF NAME                   |
| CONVEYING PARTY DATA   |                                  |
| Name   | Execution Date                   |
| Triage Data Networks, Inc.   | 01/17/2008                       |
| RECEIVING PARTY DATA   |                                  |
| Name:  | Triage Wireless, Inc.            |
| Street Address:  | 9444 Waples Street               |
| Internal Address:  | Suite 280                        |
| City:  | San Diego                        |
| State/Country:   | CALIFORNIA                       |
| Postal Code:   | 92121                            |
| PROPERTY NUMBERS Total: 1  |                                  |
| Property Type  | Number                           |
| Patent Number:   | 7396330                          |
| CORRESPONDENCE DATA  |                                  |
| Fax Number:  | (617)526-5000                    |
| <i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i> |                                  |
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| ATTORNEY DOCKET NUMBER:  | 114079.121US2                    |
| NAME OF SUBMITTER:   | Eric Prah                        |
| Total Attachments: 17  |                                  |
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State of California  
Secretary of State

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the attached transcript of 16 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

JAN 18 2008

DEBRA BOWEN  
Secretary of State

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF TRIAGE WIRELESS, INC.

**ENDORSED - FILED**  
In the office of the Secretary of State  
of the State of California

JAN 17 2008

Matthew Banet and Robert E. Murad hereby certify that:

**ONE:** They are the duly elected and acting President and Secretary, respectively, of TRIAGE WIRELESS, INC., a California corporation.

**TWO:** The original name of this corporation was Triage Data Networks, Inc. and the date of filing of the original Articles of Incorporation of this corporation with the Secretary of State of California was March 13, 2002.

**THREE:** The Articles of Incorporation of this corporation are hereby amended and restated to read as follows:

I.

The name of the Corporation is TRIAGE WIRELESS, INC. (the "*Company*").

II.

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is 41,550,000 shares, 24,000,000 shares of which shall be Common Stock (the "*Common Stock*") and 17,550,000 shares of which shall be Preferred Stock (the "*Preferred Stock*"). The Common Stock shall have no par value per share and the Preferred Stock shall have no par value per share.

B. 5,050,000 of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "*Series A Preferred*"). 12,500,000 of the authorized shares of Preferred Stock are hereby designated "Series B Preferred Stock" (the "*Series B Preferred*"). The Series A Preferred and the Series B Preferred are collectively referred to herein as the "*Series Preferred*."

C. The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows:

1. Dividend Rights.

a. Holders of Series B Preferred, in preference to the holders of any other stock of the Company, shall be entitled to receive, when and as declared by the Board of

Directors of the Company (the "*Board*"), but only out of funds that are legally available therefor, cash dividends at the rate of eight percent of the applicable Original Issue Price (as defined below) per annum on each outstanding share of Series B Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). After payment in full of any dividends to the holders of Series B Preferred, the holders of Series A Preferred, in preference to the holders of any Common Stock, shall be entitled to receive, when and as declared by the Board, but only out of funds that are legally available therefor, cash dividends at the rate of eight percent of the applicable Original Issue Price (as defined below) per annum on each outstanding share of Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The "*Original Issue Price*" of the Series Preferred shall be \$1.00 for the Series A Preferred and \$1.672 for the Series B Preferred. Such dividends shall be payable only when, as and if declared by the Board and shall be non-cumulative.

b. So long as any shares of Series Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Common Stock, nor shall any shares of any Common Stock of the Company be purchased, redeemed, or otherwise acquired for value by the Company, until all dividends on the Series Preferred set forth in Section 1(a) above shall have been paid or declared and set apart. In the event dividends are paid on any share of Common Stock, an additional dividend shall be paid with respect to all outstanding shares of Series Preferred in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

c. The provisions of Section 1(b) shall not apply to (i) a dividend payable in Common Stock, (ii) the acquisition of shares of any Common Stock in exchange for shares of any other Common Stock or (iii) a Permitted Acquisition (as defined below). A "*Permitted Acquisition*" shall mean (x) an acquisition of Common Stock by the Company pursuant to an agreement which permits the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer or (y) the repurchase of any outstanding securities of the Company that is approved by the Board and the holders of a majority of the outstanding Series Preferred, voting together as a single class on an as-if-converted to Common Stock basis. The holders of the Series Preferred expressly waive their rights, if any, as described in California Corporations Code Sections 502 and 503 as they relate to Permitted Acquisitions involving distributions on shares junior to the Series Preferred.

## 2. Voting Rights.

a. **General Rights.** Except as otherwise provided herein or as required by law, the Series Preferred shall be voted equally with the shares of the Common Stock of the Company and not as a separate class, at any annual or special meeting of shareholders of the Company, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Series Preferred shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Series Preferred are convertible (pursuant to

Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

**b. Separate Vote of Series Preferred.** So long as at least 1,800,000 shares of Series Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of a majority of the outstanding Series Preferred, voting together as a single class on an as-if-converted to Common Stock basis, shall be necessary for effecting or validating the following actions (whether taken by amendment, merger, consolidation or otherwise):

(i) Any increase or decrease in the authorized number of shares of Common Stock or Preferred Stock;

(ii) Any authorization or any designation, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Company having rights on a parity with or senior to the Series Preferred;

(iii) Any redemption, repurchase, payment of dividends or other distribution with respect to Common Stock (except for Permitted Acquisitions or any other redemption, repurchase, payment of dividends or other distribution approved by the Board);

(iv) Any agreement by the Company or its shareholders regarding an Asset Transfer or Acquisition (each as defined in Section 3(c));

(v) Any voluntary dissolution or liquidation of the Company;

(vi) Any increase or decrease in the authorized number of members of the Board;

(vii) Any amendment, alteration, or repeal of any provision of the Articles of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Designation);

(viii) Any creation or authorization of any debt security or new indebtedness or any increase in any existing indebtedness (in each case, other than (A) equipment leases or bank lines of credit or (B) other debt securities or indebtedness that are approved by the Board) that would cause the Company's aggregate indebtedness to exceed \$500,000; or

(ix) Any waiver or nonexercise of a right of first refusal or repurchase right of the Company with respect to the transfer by any shareholder of voting securities, in any single transaction or series of related transactions by such shareholder within a 12 month period, representing 20% or more of the votes represented by all outstanding voting securities of the Company to any third party other than the Company (excluding transfers to a shareholder's affiliated partnerships, trusts or entities, transfers resulting from judicial or other governmental consents or orders, transfers following the death or dissolution of a shareholder,

transfers from a trust to a trustee or beneficiary, distributions by a partnership, limited liability company or corporation to its partners, members and shareholders, respectively, and any transfer by gift to the ancestors, descendants, siblings or spouse of a shareholder or to trusts for the benefit of such persons). Notwithstanding the foregoing, in no event shall the Company be required to exercise any applicable rights of first refusal or repurchase rights with respect to any voting securities of the Company to the extent that the Company determines that its exercise of such rights would violate applicable laws, rules or regulations.

c. **Election of Board.** The holders of Series B Preferred, voting as a separate class, shall be entitled to elect one member of the Board (the "*Series B Director*") at each meeting or pursuant to each consent of the Company's shareholders 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. The Series A Preferred, voting as a separate class, shall be entitled to elect two members of the Board (the "*Series A Directors*") and, together with the Series B Director, the "*Series Preferred Directors*") at each meeting or pursuant to each consent of the Company's shareholders 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. The holders of Common Stock, voting as a separate class, shall be entitled to elect two members of the Board at each meeting or pursuant to each consent of the Company's shareholders 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. The holders of Common Stock and Series Preferred, voting together as a single class on an as-if-converted to Common Stock basis, shall be entitled to elect all remaining members of the Board and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

### 3. **Liquidation Rights:**

a. Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Series A Preferred or Common Stock, the holders of Series B Preferred shall be entitled to be paid out of the assets of the Company an amount per share of Series B Preferred equal to the applicable Original Issue Price (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) plus all declared and unpaid dividends on such share of Series B Preferred for each share of Series B Preferred held by them. If, upon any such liquidation, dissolution or winding up, the assets of the Company (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Series B Preferred of the liquidation preference set forth in this Section 3(a), then such assets (or consideration) shall be distributed among the holders of Series B Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

b. After the payment of the full liquidation preference of the Series B Preferred as set forth in Section 3(a) above, and before any distribution or payment shall be made to the holders of any Common Stock, the holders of Series A Preferred shall be entitled to be paid out of the remaining assets of the Company an amount per share of Series A Preferred equal to the applicable Original Issue Price (as adjusted for any stock dividends, combinations, splits,

recapitalizations and the like with respect to such shares) plus all declared and unpaid dividends on such share of Series A Preferred for each share of Series A Preferred held by them. If, upon any such liquidation, dissolution or winding up, the remaining assets of the Company (or the consideration received in such transaction), after the payment of the full liquidation preference of the Series B Preferred as set forth in Section 3(a) above, shall be insufficient to make payment in full to all holders of Series A Preferred of the liquidation preference set forth in this Section 3(b), then such remaining assets (or consideration) shall be distributed among the holders of Series A Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

c. After the payment of the full liquidation preference of the Series Preferred as set forth in Sections 3(a) and 3(b) above, the assets of the Company legally available for distribution (or the consideration received in such transaction), if any, shall be distributed ratably to the holders of the Common Stock and Series B Preferred, assuming for purposes of such distribution that each holder of Series B Preferred is the holder of the number of shares of Common Stock into which such shares of Series B Preferred then held by such holder are convertible pursuant to Section 4 hereof; provided, however, that the holders of Series B Preferred shall in no case receive by way of such distribution an aggregate amount (including the amount received by such holders pursuant to Section 3(a) above) in excess of three times the applicable Original Issue Price for such shares of Series B Preferred (the "***Series B Liquidation Preference Cap***"). After the holders of Series B Preferred have received an amount equal to the Series B Liquidation Preference Cap, the remaining assets of the Corporation legally available for distribution (or the consideration received in such transaction), if any, shall be distributed ratably to the holders of the Common Stock.

d. Unless the holders of a majority of the outstanding Series Preferred, voting together as a single class on an as-if-converted basis, elect otherwise, the following events shall be considered a liquidation under Sections 3(a), 3(b) and 3(c):

(i) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the shareholders of the Company immediately prior to such consolidation, merger or reorganization, own less than 50% of the voting power of the surviving entity immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions in which in excess of 50% of the Company's voting power is transferred, but excluding (x) any transaction effected exclusively to change the domicile of the Company, or (y) any transaction effected principally for bona fide equity financing purposes in which cash is received by the Company or indebtedness of the Company is cancelled or converted or a combination thereof (an "***Acquisition***"); or

(ii) a sale, lease or other disposition of all or substantially all of the assets of the Company or a license of all or substantially all of the intellectual property of the Company in all or substantially all fields of use (an "***Asset Transfer***").

#### 4. Conversion Rights.

The holders of the Series Preferred shall have the following rights with respect to the conversion of the Series Preferred into shares of Common Stock (the "*Conversion Rights*"):

a. **Optional Conversion.** Subject to and in compliance with the provisions of this Section 4, any shares of Series Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series Preferred shall be entitled upon conversion shall be the product obtained by multiplying the applicable Series Preferred Conversion Rate then in effect (determined as provided in Section 4(b)) by the number of shares of Series Preferred being converted.

b. **Series Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of each series of Series Preferred (the "*Series Preferred Conversion Rate*") shall be the quotient obtained by dividing the applicable Original Issue Price of such series of Series Preferred by the applicable Series Preferred Conversion Price (determined as provided in Section 4(c)), then in effect for such series of Series Preferred being converted.

c. **Series Preferred Conversion Price.** The initial conversion price for each series of Series Preferred shall be the applicable Original Issue Price of each series of Series Preferred (the "*Series Preferred Conversion Price*"). Such initial Series Preferred Conversion Price for each series of Series Preferred shall be subject to adjustment from time to time in accordance with this Section 4. All references to the Series Preferred Conversion Price herein shall mean the Series Preferred Conversion Price as so adjusted. The Series Preferred Conversion Price of the Series A Preferred Stock is sometimes hereinafter referred to as the "*Series A Preferred Conversion Price.*" The Series Preferred Conversion Price for the Series B Preferred Stock is sometimes hereinafter referred to as the "*Series B Preferred Conversion Price.*"

d. **Mechanics of Conversion.** Each holder of Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board as of the date of such conversion), any declared and unpaid dividends on the shares of Series Preferred being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Series Preferred. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

e. **Adjustment for Stock Splits and Combinations.** If the Company shall at any time or from time to time after the date that these Amended and Restated Articles of Incorporation are accepted for filing by the Secretary of State of the State of California (the "**Filing Date**") effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Series Preferred, the Series Preferred Conversion Price in effect for each series of Series Preferred not so subdivided immediately before that subdivision shall be proportionately decreased. Conversely, if the Company shall at any time or from time to time after the Filing Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Series Preferred, the Series Preferred Conversion Price in effect for each series of Series Preferred not so combined immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

f. **Adjustment for Common Stock Dividends and Distributions.** If the Company at any time or from time to time after the Filing Date makes, or fixes 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, in each such event each Series Preferred Conversion Price that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying each Series Preferred Conversion Price then in effect by a fraction, the numerator of which is 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 the denominator of which is 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, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, each Series Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the applicable Series Preferred Conversion Price shall be adjusted pursuant to this Section 4(f) to reflect the actual payment of such dividend or distribution.

g. **Adjustments for Other Dividends and Distributions.** If the Company at any time or from time to time after the Filing Date makes, or fixes 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, in each such event provision shall be made so that the holders of the Series Preferred shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of other securities of the Company which they would have received had their Series Preferred been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 4 with respect to the rights of the holders of the Series Preferred or with respect to such other securities by their terms; provided that any such dividend or distribution receivable upon such conversion must comply with the applicable provisions of Section 500 et seq. of the California Corporations Code at the time of such conversion.

**h. Adjustment for Reclassification, Exchange and Substitution.** If at any time or from time to time after the Filing Date, the Common Stock issuable upon the conversion of the Series Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer as defined in Section 3(c) or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4), in any such event each holder of Series Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

**i. Reorganizations, Mergers or Consolidations.** If at any time or from time to time after the Filing Date, there is a capital reorganization of the Common Stock or the merger or consolidation of the Company with or into another corporation or another entity or person (other than an Acquisition or Asset Transfer as defined in Section 3(c) or a subdivision, combination, recapitalization or reclassification, exchange or substitution of shares or other change provided for elsewhere in this Section 4), as a part of such capital reorganization, provision shall be made so that the holders of the Series Preferred shall thereafter be entitled to receive upon conversion of the Series Preferred the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the applicable Series Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

**j. Sale of Shares Below Primary Preferred Conversion Price.**

**(i)** If at any time or from time to time after the Filing Date, the Company issues or sells, or is deemed by the express provisions of this subsection (j) to have issued or sold, Additional Shares of Common Stock (as defined in subsection (j)(iv) below), other than as a dividend or other distribution on shares of Common Stock as provided in Section 4(f) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4(e) above, for an Effective Price (as defined in subsection (j)(iv) below) less than the then effective Series A Preferred Conversion Price and/or Series B Preferred Conversion Price, then and in each such case the then effective Series A Preferred Conversion Price and/or Series B Preferred Conversion Price, as applicable, shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying such Series Preferred Conversion Price by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (as determined in accordance with subsection (j)(ii) below) by the Company for the

total number of Additional Shares of Common Stock so issued would purchase at such applicable Series Preferred Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as determined in accordance with the following sentence) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Series Preferred could be converted if fully converted on the day immediately preceding the given date and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other options, warrants, convertible securities and other rights outstanding on the day immediately preceding the given date.

(ii) For the purpose of making any adjustment required under this Section 4(j), the consideration received by the Company for any issue or sale of securities shall (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, compensation or concessions paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined by the Board and (C) if Additional Shares of Common Stock, Convertible Securities (as defined in subsection (j)(iii) below) 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 which covers both, be computed as the portion of the consideration so received that may be determined by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of the adjustment required under this Section 4(j), if the Company issues or sells any rights or options for the purchase of, or stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "*Convertible Securities*") and if the Effective Price of such Additional Shares of Common Stock is less than the Series A Preferred Conversion Price and/or Series B Preferred Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options 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 rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; provided that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses; provided further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the

occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; provided further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Series A Preferred Conversion Price and/or Series B Preferred Conversion Price, as applicable and as adjusted upon the issuance of such rights, options 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 rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series A Preferred Conversion Price and/or Series B Preferred Conversion Price, as applicable and as adjusted upon the issuance of such rights, options or Convertible Securities, shall be readjusted to the Series A Preferred Conversion Price and/or Series B Preferred Conversion Price, as applicable, which 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 rights or options 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 rights or options, 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 (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Series Preferred.

(iv) *"Additional Shares of Common Stock"* shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(j), whether or not subsequently reacquired or retired by the Company other than (1) shares of Common Stock issued or issuable upon a stock split or subdivision of Common Stock, conversion of, or as a dividend or distribution on, the Series Preferred; (2) shares of Common Stock and/or options, warrants or other Convertible Securities and the Common Stock issued pursuant to such options, warrants or other Convertible Securities issued after the Filing Date to employees, officers or directors of, or consultants or advisors to, the Company pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board; (3) shares of Common Stock issued pursuant to the exercise of debentures, options, warrants or Convertible Securities outstanding as of the Filing Date; (4) shares of Common Stock or Convertible Securities issued for consideration other than cash pursuant to a merger, consolidation, strategic alliance, acquisition or similar business combination unanimously approved by the Board and the securities issued pursuant to any such Convertible Securities; (5) shares of Common Stock or Convertible Securities issued in connection with equipment lease financing arrangements, credit agreements, debt financings, or other commercial transactions unanimously approved by the Board, and the securities issued pursuant to any such Convertible Securities; and (6) shares of Common Stock or Convertible Securities issued in connection with strategic transactions, including any licensing, collaboration or joint venture arrangement, unanimously approved by

the Board and the securities issued pursuant to any such Convertible Securities. The "*Effective Price*" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold, by the Company under this Section 4(j), into the aggregate consideration received, or deemed to have been received, by the Company for such issuance or sale under this Section 4(j), for such Additional Shares of Common Stock.

k. **Certificate of Adjustment.** In each case of an adjustment or readjustment of any Series Preferred Conversion Price or a determination of any other property receivable upon conversion of the Series Preferred, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof 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 the applicable Series Preferred at the holder's address as shown in the Company's books. The certificate shall set forth, as applicable, (i) such adjustment or readjustment, showing in reasonable detail the facts upon which such adjustment or readjustment is based, including a statement of (A) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (B) the applicable Series Preferred Conversion Price in effect at the time, and (C) the number of Additional Shares of Common Stock or (ii) the type and amount, if any, of other property which at the time would be received upon conversion of the applicable Series Preferred.

l. **Notices of Record Date.** Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution or (ii) any Acquisition or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer, or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series Preferred at least 20 days (or such shorter period as may be approved by the holders of a majority of the outstanding Series Preferred, voting together as a single class on an as-if-converted to Common Stock basis) prior to the record date for any event specified in clause (i) above, or the effective date of any event specified in clause (ii) above, a notice specifying, as applicable, (1) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (2) the date on which any such Acquisition, capital reorganization, reclassification, recapitalization, merger, transfer, consolidation, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (3) the date, if any, that 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 Acquisition, capital reorganization, reclassification, recapitalization, merger, transfer, consolidation, Asset Transfer, dissolution, liquidation or winding up.

m. **Automatic Conversion.**

(i) **For Series Preferred Upon Majority Election or Qualified IPO.** Each share of Series Preferred shall automatically be converted into shares of

Common Stock, based on the then-effective applicable Series Preferred Conversion Price, at such time (the "**Automatic Conversion Time**") as (1) may be designated in writing by the holders of a majority of the outstanding Series Preferred, voting together as a single class on an as-if-converted to Common Stock basis, or (2) is immediately prior to the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (A) the per share offering price to the public is at least \$7.50 per share (as adjusted for stock splits, dividends, recapitalizations and the like after the filing date hereof) and (B) the proceeds to the Company (after deduction of underwriting commissions and expenses) are at least \$30,000,000. Upon the Automatic Conversion Time, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(ii) **Automatic Conversion Mechanics.** In the event of any automatic conversion pursuant to this Section 4(m), any certificates representing shares of the applicable Series Preferred outstanding as of Automatic Conversion Time shall immediately after such Automatic Conversion Time represent a number of shares of Common Stock as provided in this Section 4(m), and all rights of the holder of such shares as a holder of the applicable Series Preferred shall immediately upon such Automatic Conversion Time cease and terminate with respect to the shares so converted (provided that any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d)). Notwithstanding the foregoing, any holder of any Series Preferred so converted as of such Automatic Conversion Time may (but shall not be required to) after such Automatic Conversion Time surrender his, her or its stock certificate or certificates formerly representing Series Preferred to the Company, and upon such surrender the Company will issue a certificate for the correct number of shares of Common Stock to which such holder is entitled as provided in this Section 4(m).

n. **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board) on the date of conversion.

o. **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 the Series Preferred, 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 the Series Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series Preferred, 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 for such purpose.

p. **Notices.** Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party

to be notified, (ii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, (iii) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt or (iv) upon delivery by electronic transmission by the corporation (as defined in Section 20 of the California Corporations Code); provided that with respect to any notice given via electronic transmission by the corporation, the Company shall have first complied with the applicable provisions of Section 20 of the California Corporations Code and 15 U.S.C. Sec. 7001 (c)(1). Subject to the foregoing, all notices (with the exception of notices posted on an electronic message board or network as contemplated by Section 20(a)(2) of the California Corporations Code) shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

**q. Payment of Taxes.** The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series Preferred so converted were registered.

**r. No Dilution or Impairment.** Without the consent of the holders of the then outstanding Series Preferred, as required under Section 2(b), the Company shall not amend its Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series Preferred against dilution or other impairment.

**5. No Reissuance of Series Preferred.** No share or shares of Series Preferred acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued; and in addition, these Articles of Incorporation shall be appropriately amended to effect the corresponding reduction in the Company's authorized stock.

**6. No Redemption Rights.** The Series Preferred shall not be redeemable.

### **III.**

**A.** The liability of the directors of the Company for monetary damages shall be eliminated to the fullest extent permissible under California law.

**B.** The Company is authorized to provide indemnification of agents (as defined in Section 317 of the General Corporation Law of California) for breach of duty to the Company and its shareholders through bylaw provisions or through agreements with agents, shareholder resolutions or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the General Corporation Law of California, subject to the limits on such excess indemnification set forth in Section 204 of the General Corporation Law of California. If, after the effective date of this Article, California law is amended in a manner which permits a corporation to limit the

monetary or other liability of its directors or to authorize indemnification of, or advancement of such defense expenses to, its directors or to authorize indemnification of, or advancement of such defense expenses to, its directors or other persons, in any such case to a greater extent than is permitted on such effective date, the references in this Article to the "General Corporation Law of California" or "California law" shall to that extent be deemed to refer to California law as so amended.

C. Any repeal or modification of this Article shall only be prospective and shall not effect the rights under this Article in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability.

**FOUR:** The foregoing amendment and restatement of the Articles of Incorporation of this corporation has been duly approved by the Board of Directors of this corporation.

**FIVE:** The foregoing amendment and restatement of the Articles of Incorporation of this corporation has been duly approved by the required vote of shareholders in accordance with Section 902 and 903 of the California Corporations Code. This corporation has two classes of stock outstanding, its Common Stock and Preferred Stock. The total number of outstanding shares of Common Stock of this corporation is 3,206,625. The total number of outstanding shares of Preferred Stock of this corporation is 5,050,000, consisting of 5,050,000 shares of Series A Preferred Stock and no shares of Series A-1 Preferred Stock. The number of shares of each class voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was a majority of the outstanding Common Stock voting as a class, 66 2/3% of the outstanding Preferred Stock voting as a class, and a majority of the outstanding Common Stock and Preferred Stock, voting together as a single class.

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The undersigned, Matthew Banet and Robert E. Murad, the President and Secretary of Triage Wireless, Inc., declare under penalty of perjury under the laws of the State of California that the matters set out in the foregoing certificate are true of their own knowledge.

Executed at San Diego, California on Jan 17, 2008.

\_\_\_\_\_  
Matthew Banet, President

Robert E. Murad  
Robert E. Murad, Secretary

The undersigned, Matthew Banet and Robert E. Murad, the President and Secretary of Triage Wireless, Inc., declare under penalty of perjury under the laws of the State of California that the matters set out in the foregoing certificate are true of their own knowledge.

Executed at San Diego, California on January 17<sup>th</sup>, 2008.



Matthew Banet, President

Robert E. Murad, Secretary

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RECORDED: 08/24/2008

REEL: 021428 FRAME: 0711