

## PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1  
 Stylesheet Version v1.2

EPAS ID: PAT3043707

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT	
<b>NATURE OF CONVEYANCE:</b>	MERGER	
<b>EFFECTIVE DATE:</b>	09/15/2008	
<b>CONVEYING PARTY DATA</b>		
	<b>Name</b>	<b>Execution Date</b>
	VOICEBOX TECHNOLOGIES, INC.	09/15/2008
<b>RECEIVING PARTY DATA</b>		
<b>Name:</b>	VOICEBOX TECHNOLOGIES CORPORATION	
<b>Street Address:</b>	11980 NE 24TH STREET	
<b>Internal Address:</b>	SUITE 100	
<b>City:</b>	BELLEVUE	
<b>State/Country:</b>	WASHINGTON	
<b>Postal Code:</b>	98005	
<b>PROPERTY NUMBERS Total: 1</b>		
<b>Property Type</b>	<b>Number</b>	
<b>Application Number:</b>	14500723	
<b>CORRESPONDENCE DATA</b>		
<b>Fax Number:</b>	(703)770-7901	
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>		
<b>Phone:</b>	7037707900	
<b>Email:</b>	monet.noel@pillsburylaw.com, docket_ip@pillsburylaw.com	
<b>Correspondent Name:</b>	PILLSBURY WINTHROP SHAW PITTMAN, LLP	
<b>Address Line 1:</b>	P.O. BOX 10500	
<b>Address Line 4:</b>	MCLEAN, VIRGINIA 22102	
<b>ATTORNEY DOCKET NUMBER:</b>	090611-0434304	
<b>NAME OF SUBMITTER:</b>	NGAI B. ZHANG	
<b>SIGNATURE:</b>	/Ngai B. Zhang/	
<b>DATE SIGNED:</b>	09/29/2014	
<b>Total Attachments: 23</b>		
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# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES:


"VOICEBOX TECHNOLOGIES, INC.", A WASHINGTON CORPORATION,  
WITH AND INTO "VOICEBOX TECHNOLOGIES CORPORATION" UNDER THE NAME OF "VOICEBOX TECHNOLOGIES CORPORATION", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-FIFTH DAY OF SEPTEMBER, A.D. 2008, AT 6:37 O'CLOCK P.M.

4588910 8100M

131016747

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 0684785

DATE: 08-22-13

PATENT  
REEL: 033844 FRAME: 0208

AGREEMENT AND PLAN OF MERGER  
OF VOICEBOX TECHNOLOGIES CORPORATION  
A DELAWARE CORPORATION  
AND  
VOICEBOX TECHNOLOGIES, INC.  
A WASHINGTON CORPORATION

THIS AGREEMENT AND PLAN OF MERGER dated as of September 15, 2008, (the "*Agreement*") is between VoiceBox Technologies Corporation, a Delaware corporation ("*VoiceBox-DE*"), and VoiceBox Technologies, Inc., a Washington corporation ("*VoiceBox-WA*" and together with VoiceBox-DE, the "*Constituent Corporations*").

RECITALS

A. VoiceBox-DE is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has authorized capital stock consisting of 1,000 shares of Common Stock, all of which are issued and outstanding and held by VoiceBox-WA.

B. VoiceBox-WA is a corporation duly incorporated and validly existing under the laws of the State of Washington and has authorized capital stock consisting of 100,000,000 shares of Common Stock and 50,000,000 shares of Preferred Stock, of which 9,500,000 shares are designated as Series A Preferred Stock, 1,584,577 shares are designated as Series A-1 Preferred Stock, and 10,563,846 shares are designated as Series B Preferred Stock. As of September 15, 2008, 19,158,673 shares of Common Stock were issued and outstanding, 8,747,339 shares of Series A Preferred were issued and outstanding, 1,320,481 shares of Series A-1 Preferred were issued and outstanding, and 3,961,441 shares of Series B Preferred were issued and outstanding.

C. The Board of Directors of VoiceBox-WA has determined that, for the purpose of effecting the reincorporation of VoiceBox-WA in the State of Delaware, it is advisable and in the best interests of VoiceBox-WA that VoiceBox-WA merge with and into VoiceBox-DE upon the terms and conditions herein provided.

D. The respective Boards of Directors of VoiceBox-DE and VoiceBox-WA have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective stockholders and shareholders and be executed by the undersigned officers.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, VoiceBox-DE and VoiceBox-WA hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

I. MERGER

1.1 Merger. In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the Washington Business Corporations Act, VoiceBox-WA shall be merged with and into VoiceBox-DE (the "*Merger*"), the separate existence of VoiceBox-WA shall cease and VoiceBox-DE

shall be, and is herein sometimes referred as, the "***Surviving Corporation***," and the name of the Surviving Corporation shall be VoiceBox Technologies Corporation.

1.2 Filing and Effectiveness. The Merger shall be completed when the following actions shall have been completed:

(a) This Agreement and Plan of Merger shall have been adopted and approved by the stockholders of each Constituent Corporation in accordance with the requirements of the Delaware General Corporation Law and the Washington Business Corporations Act;

(b) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof;

(c) An executed Agreement and Plan of Merger meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware; and

(d) An executed Agreement and Plan of Merger meeting the requirements of the Washington Business Corporations Act shall have been filed with the Secretary of State of the State of Washington.

The date and time when the Merger shall become effective, shall be the date upon which subsections (a), (b) and (c) of this Section 1.2 are satisfied and as to VoiceBox-WA on the day subsection (d) is satisfied, is herein called the "***Effective Time of the Merger***."

1.3 Effect of the Merger. Upon the Effective Time of the Merger, the separate existence of VoiceBox-WA shall cease, and VoiceBox-DE, as the Surviving Corporation, (i) shall continue to possess all of VoiceBox-DE's assets, rights, powers and property as constituted immediately prior to the Effective Time of the Merger, (ii) shall be subject to all actions previously taken by its and VoiceBox-WA's Board of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of VoiceBox-WA in the manner more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of the debts, liabilities and obligations of VoiceBox-DE as constituted immediately prior to the Effective Time of the Merger, and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of VoiceBox-WA in the same manner as if VoiceBox-DE had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the Washington Business Corporations Act.

1.4 Assignment and Assumption of Lease. Upon the Effective Time of the Merger, in addition to the effects on the assets, rights, powers and property and the debts, liabilities and obligations of the parties hereto occurring by operation of law as set forth in Section 1.3, above, VoiceBox-WA hereby assigns, and VoiceBox-DE hereby assumes, all of VoiceBox-WA's rights and obligations set forth in the Office Building Lease, dated November 16, 2005, in which VoiceBox-WA is the Tenant and Pine Forest Properties, Inc. is the Landlord.

## II. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 Certificate of Incorporation. The Amended and Restated Certificate of Incorporation of VoiceBox-DE attached to this Agreement as Exhibit A shall become the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 Bylaws. The Bylaws of VoiceBox-DE as in effect immediately prior to the Effective Time of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 Directors and Officers. The directors and officers of VoiceBox-WA immediately prior to the Effective Time of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or until as otherwise provided by law, by the Certificate of Incorporation of the Surviving Corporation, or by the Bylaws of the Surviving Corporation.

### III. MANNER OF CONVERSION OF STOCK

3.1 VoiceBox-WA Common Stock. Upon the Effective Time of the Merger, each share of VoiceBox-WA Common Stock, issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of Common Stock, \$0.0001 par value per share, of the Surviving Corporation.

3.2 VoiceBox-WA Preferred Stock

(a) Series A Preferred Stock. Upon the Effective Time of the Merger, each share of VoiceBox-WA Series A Preferred Stock, issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of Series A Preferred Stock, \$0.0001 par value per share, of the Surviving Corporation.

(b) Series A-1 Preferred Stock. Upon the Effective Time of the Merger, each share of VoiceBox-WA Series A-1 Preferred Stock, issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of Series A-1 Preferred Stock, \$0.0001 par value per share, of the Surviving Corporation.

(c) Series B Preferred Stock. Upon the Effective Time of the Merger, each share of VoiceBox-WA Series B Preferred Stock, issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of Series B Preferred Stock, \$0.0001 par value per share, of the Surviving Corporation.

3.3 VoiceBox-WA Stock Plan, Options, Warrants, Convertible Promissory Notes, Stock Purchase Rights and Convertible Securities.

(a) Upon the Effective Time of the Merger, the Surviving Corporation shall assume the obligations of VoiceBox-WA under, and continue, the 2002 Stock Plan, as amended (the "**2002 Plan**"), and all other employee benefit plans of VoiceBox-WA. Each (i) each outstanding and unexercised option granted under the Company's 2002 Plan, (ii) warrant, (iii) convertible promissory notes, or (iv) or right to purchase, or security convertible into, any class or series of capital stock of VoiceBox-WA (each, a "**Right**") shall become, subject to the provisions in Section 3.3(c), an option, warrant, convertible promissory note, right to purchase, or a security convertible into the Surviving Corporation's capital stock of the same class or series on the basis of one share of the Surviving Corporation's capital stock for each share of VoiceBox-WA capital stock issuable pursuant to any such Right, on the same terms and conditions and at an exercise price equal to the exercise price applicable to any such VoiceBox-WA Right at the Effective Time of the Merger. This Section 3.3(a) shall not apply to VoiceBox-WA Common Stock or VoiceBox-WA Preferred Stock. Such

VoiceBox-WA Common Stock is subject to Section 3.1 and such VoiceBox-WA Preferred Stock is subject to Section 3.2.

(b) A number of shares of the Surviving Corporation's capital stock shall be reserved for issuance upon the exercise of options, warrants, convertible promissory notes, stock purchase rights and convertible securities equal to the number of shares of VoiceBox-WA Common Stock and VoiceBox-WA Preferred Stock so reserved immediately prior to the Effective Time of the Merger.

(c) The assumed Rights shall not entitle any holder thereof to a fractional share upon exercise or conversion. Any fractional share interests to which a holder of an assumed Right would otherwise be entitled upon exercise or conversion shall be rounded down to the nearest whole number and the exercise price shall be rounded up to the nearest whole cent.

3.4 VoiceBox-DE Common Stock. Upon the Effective Time of the Merger, each share of Common Stock, \$0.0001 par value, of VoiceBox-DE issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by VoiceBox-DE, by the holder of such shares, or any by other person, be canceled and returned to the status of authorized but unissued shares.

3.5 Exchange of Certificates. After the Effective Time of the Merger, each holder of an outstanding certificate representing shares of VoiceBox-WA Common Stock or VoiceBox-WA Preferred Stock, as the case may be, may be asked to surrender the same for cancellation to an exchange agent, whose name will be delivered to holders prior to any requested exchange (the "*Exchange Agent*"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock or Preferred Stock into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of VoiceBox-WA Common Stock or VoiceBox-WA Preferred Stock, as the case may be, shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Common Stock or Preferred Stock into which such shares of VoiceBox-WA Common Stock or VoiceBox-WA Preferred Stock were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock and/or Preferred Stock, as the case may be, of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common Stock and Preferred Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of VoiceBox-WA so converted and given in exchange therefore, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of the Surviving Corporation's capital stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and comply with applicable securities laws and that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation that such tax has been paid or is not payable.

#### IV. GENERAL

4.1 Further Assurances. From time to time, as and when required by VoiceBox-DE or by its successors or assigns, there shall be executed and delivered on behalf of VoiceBox-WA such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by VoiceBox-DE the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of VoiceBox-WA and otherwise to carry out the purposes of this Agreement, and the officers and directors of VoiceBox-DE are fully authorized in the name and on behalf of VoiceBox-WA or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.2 Abandonment. At any time before the Effective Time of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either VoiceBox-WA or of VoiceBox-DE, or of both, notwithstanding the approval of this Agreement by the shareholders of VoiceBox-WA or by the sole stockholder of VoiceBox-DE, or by both.

4.3 Amendment. The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretary of State of the State of Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the stockholders of either Constituent Corporation shall not: (a) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (b) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (c) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class of capital stock of any Constituent Corporation.

4.4 Registered Office. The registered office of the Surviving Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington 19808, County of New Castle. The name of the Corporation's registered agent is Corporation Service Company.

4.5 Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 11980 NE 24th Street, Suite 100, Bellevue, Washington 98005, and copies thereof will be furnished to any stockholder of either Constituent Corporation upon request and without cost.


4.6 Governing Law. This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the Washington Business Corporations Act.

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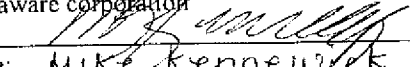


IN WITNESS WHEREOF, this Agreement and Plan of Merger having first been approved by the resolutions of the Board of Directors of VoiceBox-DE and VoiceBox-WA is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized, as of the date first written above.


**VOICEBOX TECHNOLOGIES, INC.**  
a Washington corporation

By:   
Name: Mike Kennewick  
Title: CEO

**VOICEBOX TECHNOLOGIES CORPORATION**  
a Delaware corporation

By:   
Name: Mike Kennewick  
Title: CEO

ATTEST:

**VOICEBOX TECHNOLOGIES CORPORATION**  
a Delaware corporation  
By:   
Name: THOMAS FREEMAN  
Title: Secretary

[SIGNATURE PAGE TO MERGER AGREEMENT BETWEEN VOICEBOX TECHNOLOGIES, INC.  
[AND VOICEBOX TECHNOLOGIES CORPORATION]

**Exhibit A**

**Amended and Restated Certificate of Incorporation**

**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION OF**  
**VOICEBOX TECHNOLOGIES CORPORATION**

VoiceBox Technologies Corporation, a corporation organized and existing under the laws of the State of Delaware, certifies that:

A. The name of this corporation is VoiceBox Technologies Corporation. This corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on August 18, 2008.

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

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

IN WITNESS WHEREOF, this corporation has caused this Amended and Restated Certificate of Incorporation to be signed by Michael Kennewick, a duly authorized officer of this corporation, on September 15, 2008.

By: \_\_\_\_\_

Michael Kennewick,  
Chief Executive Officer

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
VOICEBOX TECHNOLOGIES CORPORATION**

**ARTICLE 1  
NAME**

The name of this corporation is VoiceBox Technologies Corporation.

**ARTICLE 2  
REGISTERED AGENT**

The address of this corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle. The name of the registered agent at such address is Corporation Service Company.

**ARTICLE 3  
PURPOSE AND POWERS**

The purpose and powers of this corporation are as follows:

3.1 To engage in any lawful business.

3.2 To engage in any and all activities that, in the judgment of the Board of Directors of this corporation (the "**Board**"), may at any time be incidental or conducive to the attainment of the foregoing purpose.

3.3 To exercise any and all powers that a corporation formed under the Delaware General Corporation Law ("**DGCL**"), or any amendment thereto or substitute therefor, is entitled at the time to exercise.

**ARTICLE 4  
CAPITAL STOCK**

4.1 **Authorized Capital.** This corporation shall have authority to issue One Hundred Fifty-Eight Million Ninety-Three Thousand Three Hundred Fifty-Seven (158,093,357) shares of stock in the aggregate. Such shares shall be divided into two classes as follows:

4.1.1 One Hundred Million (100,000,000) shares of common stock, \$0.0001 par value per share (the "**Common Stock**").

4.1.2 Fifty-Eight Million Ninety-Three Thousand Three Hundred Fifty-Seven (58,093,357) shares of preferred stock, \$0.0001 par value per share (the "**Preferred Stock**"). The shares of Preferred Stock may be divided into and issued in series.

4.1.3 The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative

vote of the holders of a majority of the outstanding shares of this corporation entitled to vote (voting together as a single class on an as-if-converted basis).

4.2 **Common Stock.** Except to the extent rights, preferences, privileges or restrictions are granted to Preferred Stock or any series thereof, or as provided below, Common Stock has unlimited voting rights and is entitled to receive the net assets of this corporation upon dissolution. Except to the extent rights, preferences, privileges or restrictions are granted to Preferred Stock or any series thereof, or as provided below, the relative rights, preferences, privileges and restrictions granted to or imposed upon the Common Stock and the holders thereof are as follows:

4.2.1 **Dividend Rights.** The holders of record of the outstanding shares of Common Stock shall be entitled to receive, when, as and if declared by the Board, out of any funds of this corporation legally available therefor, such cash and other dividends as may be declared from time to time by the Board subject, however, to any preferential rights granted to any series of Preferred Stock to first receive such assets and funds.

4.2.2 **Liquidation Rights.** In the event of any liquidation, dissolution or winding up of the affairs of this corporation, whether voluntary or involuntary, the holders of outstanding shares of Common Stock shall be entitled to receive ratably, based on the total number of shares of Common Stock held by each, all the assets and funds of this corporation available for distribution to its stockholders, whether from capital or surplus, subject, however, to any preferential rights granted to any series of Preferred Stock to first receive such assets and funds.

4.2.3 **Voting Rights.** Each holder of outstanding shares of Common Stock shall be entitled to one vote for each share of Common Stock held.

4.3 **Designation of Rights, Preferences and Privileges of Series A-1 Preferred Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock.** One Million Five Hundred Eighty-Four Thousand Five Hundred Seventy-Seven (1,584,577) shares of Preferred Stock are designated as Series A-1 Preferred Stock (the "***Series A-1 Preferred***"). Eight Million Seven Hundred Forty-Seven Thousand Three Hundred Thirty-Nine (8,747,339) shares of Preferred Stock are designated as Series A Preferred Stock (the "***Series A Preferred***"). Three Million Nine Hundred Sixty-One Thousand Four Hundred Forty-One (3,961,441) shares of Preferred Stock are designated as Series B Preferred Stock (the "***Series B Preferred***"). Forty-Three Million Eight Hundred Thousand (43,800,000) shares of Preferred Stock are designated as Series C Preferred Stock (the "***Series C Preferred***"). Except as otherwise provided in this Certificate of Incorporation, all shares of Series A-1 Preferred, Series A Preferred, Series B Preferred and Series C Preferred shall be identical and shall entitle the holders thereof to the same rights and privileges. The relative rights, preferences, privileges and restrictions granted to or imposed upon the shares of Series A-1 Preferred, Series A Preferred, Series B Preferred and Series C Preferred and the holders thereof are as follows:

4.3.1 **Dividend Rights.**

4.3.1.1 The holders of outstanding shares of Series A-1 Preferred, Series A Preferred, Series B Preferred and Series C Preferred shall be entitled to receive, prior and in preference to any dividend on the Common Stock, dividends, when, as and if declared by the Board, out of funds legally available therefor, at the rate of (a) \$0.0606 per share (per annum), in the case of the Series A Preferred, Series A-1 Preferred and Series B Preferred, as adjusted for any consolidations, combinations, stock distributions, stock dividends, stock splits or similar events (each, a "***Recapitalization Event***"), and (b) \$0.0609 per share (per annum), in the case of the Series C Preferred, as adjusted for any

Recapitalization Event. Except as otherwise provided in this Certificate of Incorporation, no dividend or distribution of cash or property by this corporation without consideration shall be paid with respect to any shares of Common Stock or any shares of capital stock ranking junior to the Series A-1 Preferred, Series A Preferred, Series B Preferred or Series C Preferred unless the holders of outstanding shares of Series A-1 Preferred, Series A Preferred, Series B Preferred and Series C Preferred are first paid (i) all declared but unpaid dividends and (ii) a dividend per share of Series A-1 Preferred, Series A Preferred, Series B Preferred and Series C Preferred equal to the dividend that would be payable on the number of shares of Common Stock into which each such share of Series A-1 Preferred, Series A Preferred, Series B Preferred and Series C Preferred, as the case may be, is then convertible pursuant to Section 4.3.4. The right to receive such dividends on the Series A-1 Preferred, Series A Preferred, Series B Preferred and Series C Preferred shall not be cumulative, and no rights shall accrue to the holders of outstanding shares of Series A-1 Preferred, Series A Preferred, Series B Preferred and Series C Preferred by reason of the fact that dividends on such shares are not declared or paid in any prior year.

4.3.1.2 Cash Dividends, if any, shall be paid by mailing a check, postage prepaid, to the address of each holder (or, in the case of joint holders, to the address of any such holder) of outstanding shares of Series A-1 Preferred, Series A Preferred, Series B Preferred and Series C Preferred and/or Common Stock, as applicable, as shown on the books of this corporation, or to such other address as such holder specifies for such purpose by written notice to this corporation. The mailing of such check shall satisfy all obligations of this corporation with respect to such dividends, unless such check is not paid upon timely presentation.

4.3.1.3 Reasonable distributions made by this corporation in connection with its repurchase of shares of Common Stock issued to or held by officers, directors or employees of, or consultants to, this corporation or its subsidiaries upon termination of their employment or services pursuant to agreements (whether now existing or hereafter entered into) providing for the right of repurchase between this corporation and such persons upon termination of employment or services shall not be deemed dividends or distributions for purposes of this Section 4.3.1.

#### 4.3.2 Liquidation Rights.

4.3.2.1 In the event of any liquidation, dissolution or winding up of this corporation, whether voluntary or involuntary:

4.3.2.1.1 The holders of each outstanding share of Series C Preferred shall be entitled to receive, prior and in preference to any distribution of the assets or surplus funds of this corporation to the holders of outstanding shares of Common Stock or any other series of Preferred Stock, an amount equal to \$0.7614 per share (as adjusted for any Recapitalization Event), plus all declared and unpaid dividends on the Series C Preferred; provided, that if the remaining assets and surplus funds available for distribution among the holders of outstanding shares of Series C Preferred shall be insufficient to permit the payment to such holders of their full preferential amount, then the entire assets and surplus funds of this corporation then remaining legally available for distribution shall be distributed ratably among the holders of outstanding shares of Series C Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive.

4.3.2.1.2 If assets or surplus funds remain following the distributions as provided in Section 4.3.2.1.1, the holders of each outstanding share of Series A-1 Preferred, Series A Preferred and Series B Preferred shall be entitled to receive, prior and in preference to any distribution of the assets or surplus funds of this corporation to the holders of outstanding shares of Common Stock or any series of Preferred Stock that ranks on liquidation junior to the Series A-1

Preferred, Series A Preferred and Series B Preferred by reason of their ownership thereof, and subject to the rights of any series of Preferred Stock that ranks on liquidation prior to the Series A-1 Preferred, Series A Preferred and Series B Preferred, an amount equal to (i) \$0.7573 per share (as adjusted for any Recapitalization Event), in the case of the Series A-1 Preferred, plus all declared and unpaid dividends on the Series A-1 Preferred, (ii) \$0.7573 per share (as adjusted for any Recapitalization Event), in the case of the Series A Preferred, plus all declared and unpaid dividends on the Series A Preferred, and (iii) \$0.7573 per share (as adjusted for any Recapitalization Event), in the case of the Series B Preferred, plus all declared and unpaid dividends on the Series B Preferred; provided, that if the remaining assets and surplus funds available for distribution among the holders of outstanding shares of Series A-1 Preferred, Series A Preferred and Series B Preferred (and any other series of Preferred Stock entitled to share in such distribution on a parity with the Series A-1 Preferred, Series A Preferred and Series B Preferred) shall be insufficient to permit the payment to such holders of their full preferential amount, then the entire assets and surplus funds of this corporation then remaining legally available for distribution shall be distributed ratably among the holders of outstanding shares of Series A-1 Preferred, Series A Preferred and Series B Preferred (and any other series of Preferred Stock entitled to share in such distribution on a parity with the Series A-1 Preferred, Series A Preferred and Series B Preferred) in proportion to the preferential amount each such holder is otherwise entitled to receive.

4.3.2.1.3 If assets or surplus funds remain following the distributions as provided in Sections 4.4.2.1.1 and 4.4.2.1.2, then the entire remaining assets and funds of this corporation legally available for distribution, if any, shall be distributed pro rata among the holders of outstanding shares of Common Stock, Series A-1 Preferred, Series B Preferred and Series C Preferred based on the number of shares of Common Stock held by each (with the holders of Series A-1 Preferred, Series B Preferred and Series C Preferred being deemed to hold that number of shares of Common Stock into which their shares of Series A-1 Preferred, Series B Preferred and Series C Preferred, as the case may be, are then convertible); provided, however, that (i) the Series A-1 Preferred shall participate in distributions under this Section 4.3.2.1.3 until the aggregate distributions to the holders of Series A-1 Preferred on a per share basis (including those distributions paid under Section 4.3.2.1.2 above) equal \$2.2719 (as adjusted for any Recapitalization Event), plus all declared and unpaid dividends on the Series A-1 Preferred, (ii) the Series B Preferred shall participate in distributions under this Section 4.3.2.1.3 until the aggregate distributions to the holders of the Series B Preferred on a per share basis (including those distributions paid under Section 4.3.2.1.2 above) equal \$2.2719 (as adjusted for any Recapitalization Event), plus all declared and unpaid dividends on the Series B Preferred, and (iii) the Series C Preferred shall participate in distributions under this Section 4.3.2.1.3 until the aggregate distributions to the holders of the Series C Preferred on a per share basis (including those distributions paid under Section 4.3.2.1.1 above) equal \$1.5228 (as adjusted for any Recapitalization Event), plus all declared and unpaid dividends on the Series C Preferred. Thereafter, the balance of such remaining assets and funds shall be distributed ratably among the holders of Common Stock (not including the Series A-1 Preferred, the Series B Preferred or the Series C Preferred on as-if converted basis). The Series A Preferred shall not be entitled to share in any distributions pursuant to this Section 4.3.2.1.3.

4.3.2.2 The (i) sale, lease, exclusive license or other conveyance of all or substantially all of the assets of this corporation, (ii) the acquisition of this corporation by another entity by means of merger, consolidation, share exchange, reorganization or otherwise pursuant to which shares of capital stock of this corporation are converted into cash, securities or other property of the acquiring entity or any of its affiliates and upon which, the holders of voting securities of this corporation immediately prior to such merger, consolidation, share exchange or reorganization do not beneficially own, directly or indirectly, a majority of the combined voting power of the surviving entity resulting from such merger, consolidation, share exchange or reorganization, or (iii) a liquidation within the meaning of this Section 4.3.2, shall each be regarded as a "***Deemed Liquidation***"; provided, however, that this

provision shall not apply (i) to any merger effected exclusively for the purpose of changing the domicile of this corporation or the issuance of stock pursuant to an equity financing by this corporation or (ii) if the holders of a sixty percent (60%) of the outstanding shares of the Series C Preferred, voting together as a single class on an as converted to Common Stock basis, agree not to treat such transaction as a liquidation within the meaning of this Section 4.3.2.

4.3.2.3 In the event of a Deemed Liquidation, either voluntary or involuntary, the holders of Preferred Stock shall be entitled to receive at the closing (and at each date after the closing on which additional amounts (such as earn-out payments, escrow amounts and other contingent payments) are paid to stockholders of this corporation) for each share of Preferred Stock then held, out of the proceeds of such Deemed Liquidation, the greater of (i) the amount of cash, securities or other property to which such holder would be entitled to receive in a Deemed Liquidation pursuant to Sections 4.4.2.1.1, 4.4.2.1.2 and 4.4.2.1.3, as the case may be, or (ii) or the amount of cash, securities or other property to which such holder would be entitled to receive in a Deemed Liquidation with respect to such shares if such shares had been converted to Common Stock immediately prior to such Deemed Liquidation.

4.3.2.4 If any of the assets of this corporation are to be distributed other than in the form of cash under this Section 4.3.2, then the value of the assets to be distributed to the holders of outstanding shares of Preferred Stock shall be determined in good faith by the Board. Notwithstanding the above, any securities to be distributed to the stockholders shall be valued as follows:

4.3.2.4.1 if traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three business days prior to the distribution;

4.3.2.4.2 if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three business days prior to the distribution; and

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

#### 4.3.3 Voting Rights.

4.3.3.1 Generally. Each holder of outstanding shares of Series A-I Preferred, Series A Preferred, Series B Preferred and Series C Preferred shall be entitled to vote on all matters and shall be entitled to that number of votes equal to the total number of shares of Common Stock into which such holder's shares of Series A-I Preferred, Series A Preferred, Series B Preferred and Series C Preferred, as the case may be, are convertible, at the record date for the determination of stockholders entitled to vote or consent on such matter, or, if no such record date is established, at the date on which notice of the meeting of stockholders at which the vote is to be taken is mailed, or the date any written consent of stockholders is solicited if the action is to be taken by written consent. Fractional votes will not be permitted, but will be rounded up or down to the nearest whole number with one-half being rounded up based on the aggregate number of shares of Preferred Stock held. Except as otherwise expressly provided herein or by the DGCL, the holders of outstanding shares of Series A-I Preferred, Series A Preferred, Series B Preferred, Series C Preferred and Common Stock shall vote together as a single class on all matters.



4.3.3.2 Election of Directors. For so long as at least 5,000,000 shares of Series C Preferred remain outstanding (as adjusted for any Recapitalization Event), the holders of Series C Preferred, voting as a separate class, shall be entitled to elect two (2) members of the Board at each meeting or pursuant to each consent of this corporation's stockholders for the election of directors. The holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board at each meeting or pursuant to each consent of this corporation's stockholders for the election of directors. The holders of Common Stock and Preferred Stock, voting together as a single class on an as-if-converted basis, shall be entitled to elect all remaining members of the Board at each meeting or pursuant to each consent of this corporation's stockholders for the election of directors. If a vacancy on the Board in a director position previously occupied by a director elected by a separate class or classes of stockholders is to be filled by the Board, only directors elected by the same class or classes of stockholders as those who would be entitled to vote to fill such vacancy shall vote to fill such vacancy.

4.3.4 Conversion. The holders of outstanding shares of Series A-I Preferred, Series A Preferred, Series B Preferred and Series C Preferred shall have conversion rights as follows:

4.3.4.1 Right to Convert. Each share of Series A-I Preferred, Series A Preferred, Series B Preferred and Series C Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such shares, at the office of this corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) \$0.7573, in the case of the Series A-I Preferred, (ii) \$0.7573, in the case of the Series A Preferred, (iii) \$0.7573, in the case of the Series B Preferred and (iv) \$0.7614, in the case of the Series C Preferred, by the then applicable conversion price for the Series A-I Preferred, Series A Preferred, Series B Preferred and Series C Preferred, determined as hereinafter provided for such series. The conversion price shall initially be \$0.7573 per share for the Series A-I Preferred (the "**Series A-I Conversion Price**"). The conversion price shall initially be \$0.7573 per share for the Series A Preferred (the "**Series A Conversion Price**"). The conversion price shall initially be \$0.7573 per share for the Series B Preferred (the "**Series B Conversion Price**"). The conversion price shall initially be \$0.7614 per share for the Series C Preferred (the "**Series C Conversion Price**").

4.3.4.2 Automatic Conversion. Each share of Series A-I Preferred, Series A Preferred, Series B Preferred and Series C Preferred shall automatically be converted into shares of Common Stock based upon the then effective Series A-I Conversion Price, Series A Conversion Price, Series B Conversion Price or Series C Conversion Price, as the case may be, (a) immediately upon the consummation of this corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 under the Securities Act of 1933, as amended (the "Securities Act") the public offering price of which is at least \$3.81 per share (as adjusted for any Recapitalization Event) with aggregate proceeds to this corporation of not less than \$20,000,000 (prior to deducting underwriters' commissions and registration expenses) (a "**Qualified IPO**"), or (b) upon the receipt by this corporation of a written request for such conversion from the holders of at least sixty (60%) of the shares of Series C Preferred then outstanding.

4.3.4.3 Mechanics of Conversion. Before any holder of Series A-I Preferred, Series A Preferred, Series B Preferred or Series C Preferred shall be entitled to convert the same into shares of Common Stock, pursuant to Section 4.3.4.1 such holder (i) shall surrender the certificate or certificates therefor, duly endorsed, at the principal corporate office of this corporation or of any transfer agent for the Series A-I Preferred, Series A Preferred, Series B Preferred or Series C Preferred, or the holder notifies this corporation or its transfer agent that such certificates have been lost, stolen, or destroyed and executes an agreement satisfactory to this corporation to indemnify this corporation from any loss incurred by it in connection with such certificates (a "**Lost Certificate**").

*Affidavit*"), and (ii) shall give written notice by mail, postage prepaid, to this corporation at its principal corporate office, of the election to convert the same and shall state the name or names in which the certificate or certificates for shares of Common Stock are to be issued. In the event of an automatic conversion pursuant to Section 4.3.4.2, the outstanding shares of Series A-l Preferred, Series A Preferred, Series B Preferred or Series C Preferred, as the case may be, shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to this corporation or its transfer agent; provided, however, that this corporation shall not be obligated to issue certificates or Lost Certificate Affidavit evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Series A-l Preferred, Series A Preferred, Series B Preferred or Series C Preferred are either delivered to this corporation or its transfer agent as provided above. This corporation shall, as soon as practicable after such delivery, or, in the case of a lost certificate, after delivery of such agreement and indemnification, issue and deliver at such office to such holder of Series A-l Preferred, Series A Preferred, Series B Preferred or Series C Preferred or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A-l Preferred, Series A Preferred, Series B Preferred or Series C Preferred to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act, the conversion may, at the option of any holder tendering Series A-l Preferred, Series A Preferred, Series B Preferred or Series C Preferred for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Series A-l Preferred, Series A Preferred, Series B Preferred or Series C Preferred shall not be deemed to have converted such stock until immediately prior to the closing of such sale of securities. In the event some but not all of the shares of Series A-l Preferred, Series A Preferred, Series B Preferred or Series C Preferred represented by a certificate or certificates surrendered by a holder are converted, this corporation shall execute and deliver to or on the order of the holder, at the expense of this corporation, a new certificate representing the shares of Series A-l Preferred, Series A Preferred, Series B Preferred or Series C Preferred, as the case may be, that were not converted.

4.3.4.4      Conversion Price Adjustments of Series A-l Preferred, Series B Preferred and Series C Preferred.

4.3.4.4.1      In the event this corporation, at any time after the date on which the first share of any Series C Preferred is issued (the "*Original Issue Date*"), shall issue Additional Stock (as defined below) (including Additional Stock deemed to be issued pursuant to Section 4.3.4.4.5 without consideration or for a consideration per share less than the Series A-l Conversion Price, Series B Conversion Price or Series C Conversion Price in effect on the date of and immediately prior to such issuance, then, and in each such event, such Series A-l Conversion Price, Series B Conversion Price or Series C Conversion Price, as the case may be, shall be reduced, concurrently with such issuance, to a price (calculated to the nearest tenth of a cent) determined by multiplying such Series A-l Conversion Price, Series B Conversion Price or Series C Conversion Price, as the case may be, by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by this corporation for the total number of shares of Additional Stock so issued (or deemed issued) would purchase at the Series A-l Conversion Price, Series B Conversion Price or Series C Conversion Price, as the case may be, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of such shares of Additional Stock so

issued (or deemed issued). For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issuance shall be calculated on a fully diluted basis, as if all shares of Preferred Stock had been fully converted into shares of Common Stock immediately prior to such issuance and any outstanding warrants, options or other rights for the purchase of shares of stock or convertible securities had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date, but not including in such calculation any Additional Stock issuable with respect to shares of Series A-1 Preferred, Series B Preferred and Series C Preferred or outstanding options, warrants or other rights for the purchase of shares of stock or convertible securities, solely as a result of the adjustment of the Series A-1 Conversion Price, the Series B Conversion Price or the Series C Conversion Price resulting from the issuance of Additional Stock causing such adjustment.

4.3.4.4.2 No adjustment of the Series A-1 Conversion Price, the Series B Conversion Price or the Series C Conversion Price shall be made in an amount less than \$0.01 per share, provided, that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be taken into account in any subsequent adjustment made to the Series A-1 Conversion Price, the Series B Conversion Price or the Series C Conversion Price. Except as provided in subsections 4.4.4.5(c) and (d) below, no adjustment of the Series A-1 Conversion Price, the Series B Conversion Price or the Series C Conversion Price shall have the effect of increasing the Series A-1 Conversion Price, the Series B Conversion Price or the Series C Conversion Price above the Series A-1 Conversion Price, the Series B Conversion Price or the Series C Conversion Price, as the case may be, in effect immediately prior to such adjustment.

4.3.4.4.3 In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid before deducting any discounts, commissions or other expenses allowed, paid or incurred by this corporation for any underwriting or otherwise in connection with its issuance and sale.

4.3.4.4.4 In the case of the issuance of Common Stock for consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be its fair value as determined by the Board irrespective of any accounting treatment.

4.3.4.4.5 In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock, or options to purchase or rights to subscribe for such convertible or exchangeable securities (which options, rights, convertible or exchangeable securities are not excluded from the definition of Additional Stock), the following provisions shall apply:

a. The aggregate maximum number of shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued for a consideration equal to the consideration (determined in the manner provided in Sections 4.4.4.3 and 4.4.4.4 above) received by this corporation upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common Stock covered thereby, but no further adjustment to the Series A-1 Conversion Price, the Series B Conversion Price or the Series C Conversion Price shall be made for the actual issuance of Common Stock upon the exercise of such options or rights in accordance with their terms;

b. The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities

or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued for a consideration equal to the consideration received by this corporation for any such securities and related options or rights, plus the additional consideration, if any, to be received by this corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Sections 4.4.4.4.3 and 4.4.4.4.4 above), but no further adjustment to the Series A-1 Conversion Price, Series B Conversion Price or Series C Conversion Price shall be made for the actual issuance of Common Stock upon the conversion or exchange of such securities in accordance with their terms;

c. If such options, rights or convertible or exchangeable securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to this corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series A-1 Conversion Price, the Series B Conversion Price or the Series C Conversion Price computed upon the original issue thereof, and any subsequent adjustments based thereon, shall, upon such increase or decrease becoming effective, be recomputed to reflect such increase or decrease with respect to such options, rights and securities not already exercised, converted or exchanged prior to such increase or decrease becoming effective, but no further adjustment to the Series A-1 Conversion Price, the Series B Conversion Price or the Series C Conversion Price shall be made for the actual issuance of Common Stock upon the exercise of any such options or rights or the conversion or exchange of such securities in accordance with their terms;

d. Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Series A-1 Conversion Price, the Series B Conversion Price or the Series C Conversion Price, as the case may be, shall promptly be readjusted to such Series A-1 Conversion Price, the Series B Conversion Price or the Series C Conversion Price as would have been obtained had the adjustment which was made upon the issuance of such options, rights or securities or options or rights related to such securities been made upon the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities; provided, however, that no such adjustment of the Series A-1 Conversion Price, the Series B Conversion Price or the Series C Conversion Price shall affect shares of Common Stock previously issued upon conversion of the Series A-1 Preferred, Series B Preferred or Series C Preferred; and

e. If any such options or rights shall be issued in connection with the issue and sale of other securities of this corporation, together comprising one integral transaction in which no specific consideration is allocated to such options or rights by the parties thereto, such options or rights shall be deemed to have been issued for such consideration as determined in good faith by the Board.

4.3.4.4.6 "**Additional Stock**" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4.3.4.4.5 by this corporation after the Original Issue Date, other than shares of:

a. Common Stock issued or issuable upon conversion of shares of Series A-1 Preferred, Series A Preferred, Series B Preferred or Series C Preferred;

b. Common Stock issued or issuable to officers, directors, employees or sales representatives of, or consultants to, this corporation pursuant to this corporation's 2002 Stock Option Plan or, if approved by the Board, including at least one director elected by the holders of the Series C Preferred, stock purchase plans, agreements or other similar arrangements;

c. Common Stock issued or issuable to entities or individuals in connection with the acquisition of intellectual property or technology approved by the Board, including at least one director elected by the holders of the Series C Preferred;

d. Common Stock issued or issuable to a commercial lender or lessor of this corporation, or other provider of goods and services in connection with a transaction approved by the Board, including at least one director elected by the holders of the Series C Preferred;

e. Common Stock issued or issuable to entities or individuals in connection with the acquisition of another corporation or other entity or the business thereof by this corporation or any subsidiary by means of merger, consolidation, purchase of assets or other transaction or series of transactions approved by the Board, including at least one director elected by the holders of the Series C Preferred;

f. Common Stock issued or issuable to entities in connection with joint ventures, development projects, acquisitions, or other strategic transactions approved by the Board, including at least one director elected by the holders of the Series C Preferred;

g. Common Stock issuable upon conversion of options, warrants, notes or other rights to acquire securities of this corporation that were outstanding as of the Original Issue Date;

h. Common Stock issued or issuable at any time pursuant to a stock split, dividend or distribution, or upon any adjustment of the Series A-I Conversion Price, Series A Conversion Price, Series B Conversion Price or Series C Conversion Price, including antidilution adjustments or other similar adjustments; and

i. Common Stock issued or issuable in a transaction as to which the application of antidilution protection has been waived for a series of Preferred Stock by written consent of holders of at least a majority of the outstanding shares of such series of Preferred Stock with respect to which the conversion rate of such series of Preferred Stock would have otherwise been adjusted as a result of such application of antidilution protection, with each such series of Preferred Stock voting as a separate class; provided, however, that waiver of antidilution protection for Series C Preferred shall require the written consent of the holders of at least sixty percent (60%) of the outstanding shares of Series C Preferred.

**4.3.5 Other Distributions.** 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, assets (excluding cash dividends) or options or rights not referred to in Section 4.3.4, then, in each such case for the purpose of this Section 4.3.5, each of the holders of outstanding shares of Series A-I Preferred, Series A Preferred, Series B Preferred and Series C Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this corporation into which their shares of Series A-I Preferred, Series A Preferred, Series B Preferred and Series C Preferred, respectively, are then convertible as of the record date fixed for

the determination of the holders of outstanding shares of Common Stock of this corporation entitled to receive such distribution.

**4.3.6 Recapitalizations.** If the Common Stock issuable upon the conversion of Series A-l Preferred, Series A Preferred, Series B Preferred or Series C Preferred, as the case may be, shall be changed into the same or a different number of shares of any other class or classes of stock of this corporation, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for elsewhere in this Section 4 or a merger, consolidation, share exchange or reorganization provided for in Section 4.3.2.2), then and in each such event each share of Series A-l Preferred, Series A Preferred, Series B Preferred or Series C Preferred shall be convertible into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change by the number of shares of Common Stock into which such share of Series A-l Preferred, Series A Preferred, Series B Preferred or Series C Preferred, respectively, might have been converted immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein.

**4.3.7 No Fractional Shares; Certificates as to Adjustment.**

**4.3.7.1** No fractional shares of Common Stock or scrip representing fractional shares shall be issued upon the conversion of shares of Series A-l Preferred, Series A Preferred, Series B Preferred or Series C Preferred, but this corporation shall pay to the holder of such shares a cash adjustment in respect of such fractional shares in an amount equal to the same fraction of the market price per share of the Common Stock (as determined in a reasonable manner prescribed by the Board) at the close of business on the applicable conversion date. The determination as to whether or not any fractional shares are issuable shall be based upon the total number of shares of Series A-l Preferred, Series A Preferred, Series B Preferred or Series C Preferred, respectively, being converted at any one time by any holder, not upon each share of Series A-l Preferred, Series A Preferred, Series B Preferred and Series C Preferred being converted.

**4.3.7.2** In each case of an adjustment or readjustment of the Series A-l Conversion Price, Series A Conversion Price, Series B Conversion Price or Series C Conversion Price, this corporation at its expense will furnish each holder of outstanding shares of Series A-l Preferred, Series A Preferred, Series B Preferred or Series C Preferred, as the case may be, with a certificate, signed by this corporation's Chief Financial Officer or Treasurer, showing such adjustment or readjustment and stating in detail the facts upon which such adjustment or readjustment is based.

**4.3.8 Notices of Record Date.** In the event of any taking by this corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or other securities or property, or to receive any other right, this corporation shall mail to each holder of outstanding shares of Series A-l Preferred, Series A Preferred, Series B Preferred or Series C Preferred, as the case may be, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

**4.3.9 Reservation of Stock Issuable Upon Conversion.** This corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock such number of its shares of Common Stock as shall be sufficient to effect the conversion of all outstanding shares and rights to acquire shares of the Series A-l Preferred, Series A Preferred, Series B Preferred or Series C Preferred and any other series of Preferred Stock; and 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 and rights to acquire shares of the Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, this corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

**4.3.10 Notices.** Any notice required by the provisions of this Section 4 to be given to the holders of outstanding shares of Series A-I Preferred, Series A Preferred, Series B Preferred or Series C Preferred shall be deemed effectively given: (a) if delivered by hand, upon delivery; (b) if by facsimile machine during normal business hours, upon transmission with confirmation of receipt by the receiving party's facsimile terminal and if not sent during normal business hours, then on the next business day; (c) if sent by documented overnight delivery service, on the date following the date on which such notice or other written communication is delivered to such overnight delivery service for mailing; or (d) if mailed via first-class regular mail, forty-eight (48) hours after mailing to the address on record for such holder.

**4.3.11 Protective Voting Requirements.** For so long as any shares of Series C Preferred remain outstanding, the vote or written consent of the holders of at least sixty percent (60%) of the outstanding shares of Series C Preferred shall be necessary for effecting or validating the following actions (whether consummated by merger, amendment, consolidation or otherwise):

4.3.11.1 altering or changing the rights, preferences or privileges of the Preferred Stock or any series of Preferred Stock;

4.3.11.2 any increase or decrease in the authorized number of shares of Common Stock or Preferred Stock or any series of Preferred Stock;

4.3.11.3 creating (by reclassification or otherwise) any new class or series of stock or any other securities convertible into equity securities of this corporation having rights, preferences or privileges senior to or on a parity with the Series C Preferred;

4.3.11.4 any redemption or repurchase of any shares of Preferred Stock or Common Stock (excluding shares repurchased at the lower of fair market value or cost upon termination of an employee or consultant pursuant to a restricted share purchase agreement, equity incentive agreement or similar agreement);

4.3.11.5 a Deemed Liquidation;

4.3.11.6 any amendment, waiver, alteration or repeal of any provision of this Certificate of Incorporation or the Bylaws of this corporation;

4.3.11.7 any increase or decrease in the authorized number of members of the Board, unless approved in writing by the holders of at least sixty percent (60%) of the Series C Preferred;

4.3.11.8 any action that results in the payment or declaration of a dividend on any shares of Common Stock or Preferred Stock;

4.3.11.9 any borrowings, loans, or guarantees or incurrence, issuance or guarantee of debt in excess of five hundred thousand dollars (\$500,000); or

4.3.11.10 any sale, transfer or encumbrance of technology other than licenses granted by this corporation in the ordinary course of business.

4.4 **Issuance of Certificates.** The Board shall have the authority to issue shares of the capital stock of this corporation and the certificates therefor subject to such transfer restrictions and other limitations as it may deem necessary to promote compliance with applicable federal and state securities laws, and to regulate the transfer thereof in such manner as may be calculated to promote such compliance or to further reasonable purpose.

4.5 **Reissuance of Preferred Stock.** In the event that any shares of Preferred Stock shall be converted pursuant to Section 4.3.4 or otherwise repurchased by this corporation, the shares so converted or repurchased shall be cancelled and shall not be issuable by this corporation.

## ARTICLE 5 LIMITATION OF LIABILITY; INDEMNIFICATION

5.1 To the fullest extent permitted by the DGCL as the same exists or as may hereafter be amended, a director of this corporation shall not be personally liable to this corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of this corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

5.2 This corporation shall have the power to indemnify, to the extent permitted by the DGCL, as it presently exists or may hereafter be amended from time to time, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") by reason of the fact that he or she is or was a director, officer, employee or agent of this corporation or is or was serving at the request of this corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding.

5.3 In the event that a member of the Board who is also a partner or employee of an entity that is a holder of Preferred Stock and that is in the business of investing and reinvesting in other entities, or an employee of an entity that manages such an entity (each, a "**Fund**") acquires knowledge of a potential transaction or other matter in such individual's capacity as a partner or employee of the Fund or the manager or general partner of the Fund and that may be an opportunity of interest for both this corporation and such Fund (a "**Corporate Opportunity**"), then this corporation (i) renounces any expectancy that such director or Fund offer an opportunity to participate in such Corporate Opportunity to this corporation and (ii) to the fullest extent permitted by law, waives any claim that such opportunity constituted a Corporate Opportunity that should have been presented by such director or Fund to this corporation or any of its affiliates; provided, however, that such director acts in good faith and such opportunity was not offered to such person in his or her capacity as a director of this corporation.

5.4 Neither any amendment nor repeal of this Article 5, nor the adoption of any provision of this corporation's Certificate of Incorporation inconsistent with this Article 5, shall eliminate or reduce the effect of this Article 5, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article 5, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.



ARTICLE 6  
**MANAGEMENT**

6.1 For the management of the business and for the conduct of the affairs of this corporation, and in further definition, limitation and regulation of the powers of this corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further *provided* that:

6.1.1 The management of the business and the conduct of the affairs of this corporation shall be vested in its Board. The number of directors which shall constitute the whole Board shall be fixed by the Board in the manner provided in the Bylaws, subject to any restrictions which may be set forth in this Certificate of Incorporation.

6.1.2. Except as otherwise set forth in this Certificate of Incorporation, the Board is expressly empowered to adopt, amend or repeal the Bylaws of this corporation. The stockholders shall also have the power to adopt, amend or repeal the Bylaws of this corporation; provided however, that, in addition to any vote of the holders of any class or series of stock of this corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of this corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of this corporation.

6.1.3 The directors of this corporation need not be elected by written ballot unless the Bylaws so provide.

ARTICLE 7  
**EXISTENCE**

This corporation is to have perpetual existence.

ARTICLE 8  
**MEETINGS AND BOOKS**

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of this corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board or in the Bylaws of this corporation.