

F11000000 1045

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

PICK-UP WAIT MAIL

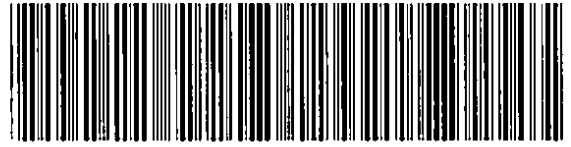
(Business Entity Name)

(Document Number)

Certified Copies _____ Certificates of Status _____

Special Instructions to Filing Officer:

Office Use Only



900377434179

FILED
2021 DEC 15 AM 8:49
CLERK OF STATE
TALLAHASSEE, FL
RECEIVED
2021 DEC 15 PM 12:21
TALLAHASSEE, FL

Y SULKER
DEC 16 2021

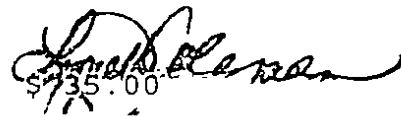
CORPORATION SERVICE COMPANY
1201 Hays Street
Tallahassee, FL 32301
Phone: 850-558-1500

ACCOUNT NO. : I20000000195

REFERENCE : 103923 8317632

AUTHORIZATION :

COST LIMIT : \$735.00



ORDER DATE : October 13, 2021

ORDER TIME : 8:26 AM

ORDER NO. : 103923-045

CUSTOMER NO: 8317632

FOREIGN FILINGS

NAME: SUREFIRE MEDICAL, INC.

XX CORPORATE
 LIMITED PARTNERSHIP
 LIMITED LIABILITY COMPANY

XXXX AMENDMENT

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

 CERTIFIED COPY
XX PLAIN STAMPED COPY
 CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Alexxis Weiland -- EXT#

EXAMINER: _____

COVER LETTER

TO: Amendment Section Division of Corporations

SUBJECT: Surefire Medical, Inc.

Name of Corporation

DOCUMENT NUMBER: F11000001045

The enclosed Amendment and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Name of Contact Person

Firm/Company

Address

City/State and Zip Code

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Name of Contact Person

at (_____)

Area Code & Daytime Telephone Number

Enclosed is a check for the following amount:

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> \$35 Filing Fee | <input type="checkbox"/> \$43.75 Filing Fee & Certificate of Status | <input type="checkbox"/> \$43.75 Filing Fee & Certified Copy | <input type="checkbox"/> \$52.50 Filing Fee, Certificate of Status & Certified Copy |
|--|---|--|---|

Mailing Address:

Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Street Address:

Amendment Section
Division of Corporations
The Centre of Tallahassee
2415 N. Monroe Street, Suite 810
Tallahassee, FL 32303

PROFIT CORPORATION
APPLICATION BY FOREIGN PROFIT CORPORATION TO FILE AMENDMENT TO APPLICATION FOR
AUTHORIZATION TO TRANSACT BUSINESS IN FLORIDA

(Pursuant to s. 607.1504, F.S.)

SECTION I
(1-3 MUST BE COMPLETED)

F11000001045

(Document number of corporation (if known))

1. Surefire Medical, Inc.

(Name of corporation as it appears on the records of the Department of State)

2. Delaware

(Incorporated under laws of)

3. 03/08/2011

(Date authorized to do business in Florida)

SECTION II
(4-7 COMPLETE ONLY THE APPLICABLE CHANGES)

4. If the amendment changes the name of the corporation, when was the change effected under the laws of its jurisdiction of incorporation? 09/29/2021

5. TriSalus Life Sciences, Inc.

(Name of corporation after the amendment, adding suffix "corporation," "company," or "incorporated," or appropriate abbreviation, if not contained in new name of the corporation)

(If new name is unavailable in Florida, enter alternate corporate name adopted for the purpose of transacting business in Florida)

6. If the amendment changes the period of duration, indicate new period of duration.

(New duration)

7. If the amendment changes the jurisdiction of incorporation, indicate new jurisdiction.

(New jurisdiction)

8. If the amendment changes the jurisdiction of organization, indicate new jurisdiction:

9. If the amendment changes person, title or capacity in accordance with 607.1504 (4), indicate that change:

2021 SEP 15 AM 8:49
FILED
TALLAHASSEE, FL

<u>Title/ Capacity</u>	<u>Name</u>	<u>Address</u>	<u>Type of Action</u>
_____	_____	_____	<input type="checkbox"/> Add
_____	_____	_____	<input type="checkbox"/> Remove
_____	_____	_____	<input type="checkbox"/> Add
_____	_____	_____	<input type="checkbox"/> Remove
_____	_____	_____	<input type="checkbox"/> Add
_____	_____	_____	<input type="checkbox"/> Remove
_____	_____	_____	<input type="checkbox"/> Add
_____	_____	_____	<input type="checkbox"/> Remove
_____	_____	_____	<input type="checkbox"/> Add
_____	_____	_____	<input type="checkbox"/> Remove

10. Attached is a certificate or document of similar import, evidencing the amendment, authenticated not more than 90 days prior to delivery of the application to the Department of State, by the Secretary of State or other official having custody of corporate records in the jurisdiction under the laws of which it is incorporated.

Mary T. Szela

(Signature of a director, president or other officer - if in the hands of a receiver or other court appointed fiduciary, by that fiduciary)

Mary Szela

 (Typed or printed name of person signing)

President

 (Title of person signing)

FILING FEE \$35.00

TriSalus Life Sciences, Inc. – Officers and Directors

Officers:

Mary Szela, President – 6272 W. 91st Ave., Westminster, CO 80031

Rajesh Mistry, Treasurer - 6272 W. 91st Ave., Westminster, CO 80031

Anni Goldberg, Secretary - 6272 W. 91st Ave., Westminster, CO 80031

Directors:

Mats Wahlstrom - 6272 W. 91st Ave., Westminster, CO 80031

Kerry Hicks - 6272 W. 91st Ave., Westminster, CO 80031

Gene McGrevin - 6272 W. 91st Ave., Westminster, CO 80031

Sean Murphy - 6272 W. 91st Ave., Westminster, CO 80031

Diane Parks - 6272 W. 91st Ave., Westminster, CO 80031

Anil Singhal - 6272 W. 91st Ave., Westminster, CO 80031

John L. Tullis - 6272 W. 91st Ave., Westminster, CO 80031

Simone Song - 6272 W. 91st Ave., Westminster, CO 80031

Mary Szela - 6272 W. 91st Ave., Westminster, CO 80031

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 RESTATED CERTIFICATE OF "SUREFIRE MEDICAL, INC.", CHANGING ITS NAME FROM "SUREFIRE MEDICAL, INC." TO "TRISALUS LIFE SCIENCES, INC.", FILED IN THIS OFFICE ON THE TWENTY-NINTH DAY OF SEPTEMBER, A.D. 2021, AT 1:32 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION O.**

SUREFIRE MEDICAL, INC.

Surefire Medical, Inc., a corporation organized and existing under the laws of the State of Delaware (the "*Corporation*"), certifies that:

1. The name of the Corporation is Surefire Medical, Inc. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on April 6, 2010.

2. 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 the Corporation in accordance with Section 228 of the General Corporation Law of the State of Delaware.

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

IN WITNESS WHEREOF, Surefire Medical, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by Mary Szela, a duly authorized officer of the Corporation on September 29, 2021.

/s/ Mary Szela

Mary Szela

President and Chief Executive Officer

EXHIBIT A

ARTICLE I

The name of the Corporation is TriSalus Life Sciences, Inc.

ARTICLE II

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

ARTICLE III

The address of the Corporation's registered office in the State of Delaware is 251 Little Falls Drive, in the City of Wilmington, area code 19808, County of New Castle. The name of the registered agent at such address is Corporation Service Company.

ARTICLE IV

1. The total number of shares of stock that the corporation shall have authority to issue is 1,033,060,884, consisting of 560,000,000 shares of Common Stock, \$0.001 par value per share (the "**Common Stock**"), and 473,060,884 shares of Preferred Stock, \$0.001 par value per share, 5,331,943 of which shares shall be designated "**Series A-1 Preferred Stock**", 23,307,464 of which shares shall be designated "**Series A-2 Preferred Stock**", 24,792,020 of which shares shall be designated "**Series A-3 Preferred Stock**", 5,169,690 of which shares shall be designated "**Series A-4 Preferred Stock**", 29,715,910 of which shares shall be designated "**Series A-5 Preferred Stock**", 32,601,000 of which shares shall be designated "**Series A-6 Preferred Stock**", 295,000,000 of which shares shall be designated "**Series B Preferred Stock**" and 57,142,857 of which shares shall be designated "**Series B-1 Preferred Stock**".

ARTICLE V

The terms and provisions of the Common Stock and Preferred Stock are as follows:

1. **Definitions.** For purposes of this Article V, the following definitions shall apply:

(a) "**Conversion Price**" shall mean \$1.224 per share for the Series A-1 Preferred Stock, \$0.387 per share for the Series A-2 Preferred Stock, \$0.43 per share for the Series A-3 Preferred Stock, \$0.396 per share for the Series A-4 Preferred Stock, \$0.44 per share for the Series A-5 Preferred Stock, \$0.50 per share for the Series A-6 Preferred Stock, \$0.30 per share for the Series B Preferred Stock and \$0.35 per share for the Series B-1 Preferred Stock (each subject to adjustment from time to time for Recapitalizations and as otherwise set forth elsewhere herein).

(b) "**Convertible Securities**" shall mean any evidences of indebtedness, shares or other securities convertible into or exercisable or exchangeable for Preferred Stock or Common Stock.

(c) "**Corporation**" shall mean TriSalus Life Sciences, Inc.

(d) “**Distribution**” shall mean the transfer of cash or other property by the Corporation to the stockholders on account of the Corporation’s capital stock whether by way of (a) dividend or otherwise, other than dividends on Common Stock payable solely in Common Stock, or (b) the purchase or redemption of shares of the Corporation by the Corporation for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries at a price not greater than the amount paid by such persons for such shares upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries at a price not greater than the amount paid by such persons for such shares pursuant to rights of first refusal contained in agreements providing for such right, (iii) repurchase of capital stock of the Corporation in connection with any settlement of a dispute with any stockholder approved by a majority of the Board of Directors (the “**Board of Directors**”), which must include the affirmative approval of at least one of any then-serving Series A-4/A-5 Director, Series A-6 Director or Series B Director (but excluding any director affiliated with the stockholder in question), at a price not greater than the amount paid by such persons for such shares and (iv) any other repurchase or redemption of capital stock of the Corporation approved by a majority of the Board of Directors, which must include the affirmative approval of at least one of any then-serving Series A-4/A-5 Director, Series A-6 Director or Series B Director (but excluding any director affiliated with the stockholder in question).

(e) “**Dividend Rate**” shall mean an annual rate of \$0.09792 per share for the Series A-1 Preferred Stock, \$0.03096 per share for the Series A-2 Preferred Stock, \$0.0344 per share for the Series A-3 Preferred Stock, \$0.03168 per share for the Series A-4 Preferred Stock, \$0.0352 per share for the Series A-5 Preferred Stock, \$0.04 per share for the Series A-6 Preferred Stock, \$0.024 per share for the Series B Preferred Stock and \$0.028 per share for the Series B-1 Preferred Stock (each subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(f) “**Liquidation Preference**” shall mean \$1.224 per share for the Series A-1 Preferred Stock, \$0.387 per share for the Series A-2 Preferred Stock, \$0.43 per share for the Series A-3 Preferred Stock, \$0.396 per share for the Series A-4 Preferred Stock, \$0.44 per share for the Series A-5 Preferred Stock, \$0.50 per share for the Series A-6 Preferred Stock, \$0.30 per share for the Series B Preferred Stock and \$0.35 per share for the Series B-1 Preferred Stock (each subject to adjustment from time to time for Recapitalizations).

(g) “**Options**” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(h) “**Original Issue Price**” shall mean \$1.224 per share for the Series A-1 Preferred Stock, \$0.387 per share for the Series A-2 Preferred Stock, \$0.43 per share for the Series A-3 Preferred Stock, \$0.396 per share for the Series A-4 Preferred Stock, \$0.44 per share for the Series A-5 Preferred Stock, \$0.50 per share for the Series A-6 Preferred Stock, \$0.30 per share for the Series B Preferred Stock and \$0.35 per share for the Series B-1 Preferred Stock (each subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(i) **“Preferred Stock”** shall mean the Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock, Series A-5 Preferred Stock, Series A-6 Preferred Stock, Series B Preferred Stock and Series B-1 Preferred Stock.

(j) **“Recapitalization”** shall mean, with respect to any particular class or series of the Corporation’s outstanding capital stock, any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event with respect to such capital stock.

2. Dividends.

(a) **Preferred Stock.** In any calendar year, the holders of outstanding shares of Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor, at the Dividend Rate specified for such series of Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on Common Stock of the Corporation in such calendar year. No Distributions shall be made with respect to the Common Stock unless dividends on the Preferred Stock have been declared in accordance with the preferences stated herein and all declared dividends on the Preferred Stock have been paid or set aside for payment to the Preferred Stock holders. The right to receive dividends on shares of Preferred Stock shall not be cumulative, and no right to dividends shall accrue to holders of Preferred Stock by reason of the fact that dividends on said shares are not declared. Payment of any dividends to the holders of Preferred Stock shall be on a *pro rata, pari passu* basis in proportion to the Dividend Rates for each series of Preferred Stock.

(b) **Common Stock.** Dividends may be paid on the Common Stock when, as and if declared by the Board of Directors, subject to the prior dividend rights of the Preferred Stock. In the event dividends are paid on any share of Common Stock, the Corporation shall pay an additional dividend on all outstanding shares of Preferred Stock in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

(c) **Non-Cash Distributions.** Whenever a Distribution provided for in this Section 2 shall be payable in property other than cash, the value of such Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors.

3. Liquidation Rights.

(a) Liquidation Preference.

(i) **Series B Preferred Stock and Series B-1 Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series B Preferred Stock and the Series B-1 Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Series A-6 Preferred Stock, Series A-5 Preferred Stock, Series A-4 Preferred Stock, Series A-3 Preferred Stock, Series A-2 Preferred Stock, Series A-1 Preferred Stock or the Common Stock by reason of their ownership of such stock, an amount per share for each share of Series B Preferred Stock and Series B-1 Preferred Stock held by them equal to the

sum of (A) the Liquidation Preference specified for such share of Series B Preferred Stock and Series B-1 Preferred Stock, as applicable, and (B) all declared but unpaid dividends (if any) on such share of Series B Preferred Stock and Series B-1 Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Series B Preferred Stock and Series B-1 Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a)(i), then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and *pro rata* among the holders of the Series B Preferred Stock and Series B-1 Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a)(i).

(ii) **Series A-6 Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, after the payment or setting aside for payment of the full liquidation preference set forth in Section 3(a)(i) above, the holders of the Series A-6 Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Series A-5 Preferred Stock, Series A-4 Preferred Stock, Series A-3 Preferred Stock, Series A-2 Preferred Stock, Series A-1 Preferred Stock or the Common Stock by reason of their ownership of such stock, an amount per share for each share of Series A-6 Preferred Stock held by them equal to the sum of (A) the Liquidation Preference specified for such share of Series A-6 Preferred Stock and (B) all declared but unpaid dividends (if any) on such share of Series A-6 Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Series A-6 Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a)(ii), then the entire assets of the Corporation legally available for distribution following payment of the full liquidation preference set forth in Section 3(a)(i) shall be distributed with equal priority and *pro rata* among the holders of the Series A-6 Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a)(i).

(iii) **Series A-4 Preferred Stock and Series A-5 Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, after the payment or setting aside for payment of the full liquidation preferences set forth in Sections 3(a)(i) and 3(a)(ii) above, the holders of the Series A-4 Preferred Stock and Series A-5 Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Series A-3 Preferred Stock, Series A-2 Preferred Stock, Series A-1 Preferred Stock or the Common Stock by reason of their ownership of such stock, an amount per share for each share of Series A-4 Preferred Stock and Series A-5 Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series A-4 Preferred Stock or Series A-5 Preferred Stock, as applicable, and (ii) all declared but unpaid dividends (if any) on such share of Series A-4 Preferred Stock and Series A-5 Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Series A-4 Preferred Stock and Series A-5 Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a)(iii), then the entire assets of the Corporation legally available for distribution following payment of the full liquidation preferences set forth in Section 3(a)(i) and Section 3(a)(ii) shall be distributed with equal priority and *pro rata* among the holders of the

Series A-4 Preferred Stock and Series A-5 Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a)(iii).

(iv) **Series A-3 Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, after the payment or setting aside for payment of the full liquidation preferences set forth in Section 3(a)(i), Section 3(a)(ii) and Section 3(a)(iii) above, the holders of the Series A-3 Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Series A-2 Preferred Stock, Series A-1 Preferred Stock or the Common Stock by reason of their ownership of such stock, an amount per share for each share of Series A-3 Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series A-3 Preferred Stock and (ii) all declared but unpaid dividends (if any) on such share of Series A-3 Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Series A-3 Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a)(iv), then the entire assets of the Corporation legally available for distribution following payment of the full liquidation preferences set forth in Section 3(a)(i), Section 3(a)(ii) and Section 3(a)(iii) shall be distributed with equal priority and *pro rata* among the holders of the Series A-3 Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a)(iv).

(v) **Series A-2 Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, after the payment or setting aside for payment of the full liquidation preferences set forth in Section 3(a)(i), Section 3(a)(ii), Section 3(a)(iii) and Section 3(a)(iv) above, the holders of the Series A-2 Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Series A-1 Preferred Stock or the Common Stock by reason of their ownership of such stock, an amount per share for each share of Series A-2 Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series A-2 Preferred Stock and (ii) all declared but unpaid dividends (if any) on such share of Series A-2 Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Series A-2 Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a)(v), then the entire assets of the Corporation legally available for distribution following payment of the full liquidation preferences set forth in Section 3(a)(i), Section 3(a)(ii), Section 3(a)(iii) and Section 3(a)(iv) shall be distributed with equal priority and *pro rata* among the holders of the Series A-2 Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a)(v).

(vi) **Series A-1 Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, after the payment or setting aside for payment of the full liquidation preferences set forth in Section 3(a)(i), Section 3(a)(ii), Section 3(a)(iii), Section 3(a)(iv) and Section 3(a)(v) above, the holders of the Series A-1 Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, an amount per share for each share of Series A-1 Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series A-1

Preferred Stock and (ii) all declared but unpaid dividends (if any) on such share of Series A-1 Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Series A-1 Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a)(vi), then the entire assets of the Corporation legally available for distribution following payment of the full liquidation preferences set forth in Section 3(a)(i), Section 3(a)(ii), Section 3(a)(iii), Section 3(a)(iv) and Section 3(a)(v) above shall be distributed with equal priority and *pro rata* among the holders of the Series A-1 Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a)(vi).

(b) **Remaining Assets.** After the payment to the holders of Preferred Stock of the full preferential amounts specified in Section 3(a) above, the entire remaining assets of the Corporation legally available for distribution by the Corporation shall be distributed with equal priority and *pro rata* among the holders of the Common Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock, Series A-5 Preferred Stock, Series A-6 Preferred Stock, Series B Preferred Stock and Series B-1 Preferred Stock in proportion to the number of shares of Common Stock held by them on an as-converted to Common Stock basis.

(c) **Shares not Treated as Both Preferred Stock and Common Stock in any Distribution.** Except as provided in Section 2(b) and, with respect to the Series A-3 Preferred Stock, Series A-4 Preferred Stock, Series A-5 Preferred Stock, Series A-6 Preferred Stock, Series B Preferred Stock and Series B-1 Preferred Stock, Section 3(b), shares of Preferred Stock shall not be entitled to be converted into shares of Common Stock in order to participate in any Distribution, or series of Distributions, as shares of Common Stock, without first foregoing participation in the Distribution, or series of Distributions, as shares of Preferred Stock. For purposes of determining the amount each holder of shares of Series A-1 Preferred Stock and Series A-2 Preferred Stock is entitled to receive with respect to any Distribution in the event of any liquidation, dissolution or winding up of the Corporation, each such holder of shares of Series A-1 Preferred Stock and Series A-2 Preferred Stock shall be entitled to receive, for each share of Series A-1 Preferred Stock and Series A-2 Preferred Stock then held, out of the proceeds of such Distribution, the greater of (i) the amount of cash, securities or other property which such holder would be entitled to receive in a Distribution with respect to such shares pursuant to Section 3(a) above or (ii) the amount of cash, securities or other property which such holder would be entitled to receive in a Distribution with respect to such shares if such shares had been converted to Common Stock immediately prior to such Distribution.

(d) **Liquidation.** For purposes of this Section 3, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, and shall include, (i) a sale, lease, exclusive license, transfer or other disposition, in a single transaction or series of related transactions, of all or substantially all of the Corporation's assets; (ii) except an equity financing in which the Corporation is the surviving corporation, a consolidation or merger of the Corporation in a transaction in which the stockholders of the Corporation immediately prior to the consummation of the transaction do not continue to hold at least fifty percent (50%) of the outstanding equity securities of the successor entity throughout the twelve month period immediately following the consummation of the transaction; (iii) a sale, lease, exclusive license, transfer or other disposition, in a single transaction or series of related transactions, of all or substantially all of the Corporation's intellectual property; or (iv) a liquidation, dissolution or

winding up of the Corporation or its assets (each of the events referred to in (i) through (iv) are referred to herein as a “*Liquidation*”). Notwithstanding the foregoing, a transaction shall not be deemed to be a Liquidation if it is excluded from the definition of Liquidation by the prior written consent of holders of a majority of the then outstanding shares of Preferred Stock, voting together a single class and on an as-converted basis. All consideration received and to be received in connection with any Liquidation shall be deemed to be assets of the Corporation legally available for distribution for purposes of this Section 3.

(e) **Valuation of Non-Cash Consideration.** If any assets of the Corporation distributed to stockholders in connection with any liquidation, dissolution, or winding up of the Corporation are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board of Directors, which must include the affirmative approval of at least one of any then-serving Series A-4/A-5 Director, Series A-6 Director or Series B Director, *except that* any publicly-traded securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Corporation shall be valued as follows:

(i) if the securities are then traded on a national securities exchange, then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange over the ten (10) trading day period ending five (5) trading days prior to the Distribution;

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the Distribution.

In the event of a merger or other acquisition of the Corporation by another entity, the Distribution date shall be deemed to be the date such transaction closes.

For the purposes of this Section 3(e), “*trading day*” shall mean any day which the exchange or system on which the securities to be distributed are traded is open and “*closing prices*” or “*closing bid prices*” shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or a Nasdaq Stock Market, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

(f) The Corporation shall not have the power to effect a Liquidation referred to in Section 3(d)(ii) unless the agreement or plan of merger or consolidation pursuant to which such transaction is consummated provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Section 3(a) and Section 3(b).

(g) In the event of a Liquidation referred to in Section 3(d)(i) or Section 3(d)(iii), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within ninety (90) days after such Liquidation, then (i) the Corporation shall send a written notice to each holder of Preferred Stock no later than the ninetieth (90th) day after the Liquidation advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause to require the redemption of such shares of Preferred Stock and (ii) if the holders of a majority of the then-outstanding shares of Preferred Stock, voting together as a single class and on as-converted basis, so request in a written instrument delivered to the Corporation not later than one hundred twenty (120) days after such Liquidation, the Corporation shall use the consideration received by the Corporation in connection with such Liquidation (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors, which must include the affirmative approval of at least one of any then-serving Series A-4/A-5 Director, Series A-6 Director or Series B Director), together with any other assets of the Corporation available for distribution to its stockholders, all to the extent permitted by Delaware law governing distributions to stockholders (the “*Available Proceeds*”), on the one hundred fiftieth (150th) day after such Liquidation, to redeem all outstanding shares of Preferred Stock. Available Proceeds shall be distributed in accordance with this Section 3.

(h) In the event of a Liquidation, if any portion of the consideration payable to the stockholders of the Corporation payable only upon satisfaction of contingencies (the “*Additional Consideration*”), then (i) the portion of consideration that is not Additional Consideration (such portion, the “*Initial Consideration*”) shall be allocated among the holders of capital stock of the Corporation in accordance with this Section 3 as if the Initial Consideration was the only consideration payable in connection with such Liquidation and (ii) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with this Section 3 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Section 3(h), and without limitation to the types of consideration that constitute Additional Consideration, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Liquidation shall be deemed to be Additional Consideration.

4. **Conversion.** The holders of the Preferred Stock shall have conversion rights as follows:

(a) ***Right to Convert.*** Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into that number of fully-paid, nonassessable shares of Common Stock determined by dividing the Original Issue Price plus any declared but unpaid dividends for the relevant series, by the Conversion Price for such series. (The number of shares of Common Stock into which each share of Preferred Stock of a series may be converted is hereinafter referred to as the “*Conversion Rate*” for each such series.) Upon any decrease or increase in the Conversion Price for any series of Preferred Stock, as described in this Section 4, the Conversion Rate for such series shall be appropriately increased or decreased.

(b) ***Automatic Conversion.*** Each share of Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "***Securities Act***"), covering the offer and sale of the Corporation's Common Stock through a nationally recognized underwriter on the New York Stock Exchange, Nasdaq Stock Market or other internationally recognized securities exchange as approved by the Board of Directors, at a public offering price of not less than \$1.00 per share (subject to adjustment for Recapitalizations), *provided* that the aggregate net proceeds (after underwriting discounts and commissions) to the Corporation are not less than \$50,000,000, or (ii) upon the consent or vote of the holders of a majority of the shares of Preferred Stock then outstanding, voting together as a single class and on an as-converted basis, or, if later, the effective date for conversion specified in such vote or consent (each of the events referred to in (i) and (ii) are referred to herein as an "***Automatic Conversion Event***").

(c) ***Mechanics of Conversion.*** No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board of Directors, which must include the affirmative approval of at least one of any then-serving Series A-4/A-5 Director, Series A-6 Director or Series B Director. For such purpose, all shares of Preferred Stock held by each holder of Preferred Stock shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, he shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock or (B) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement reasonably satisfactory to the Corporation (if requested by the Corporation) to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that he elects to convert the same; *provided, however,* that on the date of an Automatic Conversion Event, the outstanding shares of the applicable Preferred Stock 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 the Corporation or its transfer agent; *provided further,* however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of the applicable Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock. 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 Preferred Stock to be converted (except for a conversion in connection with an Automatic Conversion Event as set forth in the preceding paragraph), and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date; *provided, however*, that if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act or a merger, sale, financing, or liquidation of the Corporation or other event, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction or upon the occurrence of such event, in which case the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such transaction or the occurrence of such event.

(d) ***Adjustments to Conversion Price for Diluting Issues.***

(i) ***Special Definition.*** For purposes of this Section 4(d), “***Additional Shares of Common***” shall mean all shares of Common Stock issued (or, pursuant to Section 4(d)(iii), deemed to be issued) by the Corporation after the filing of this Amended and Restated Certificate of Incorporation, other than issuances or deemed issuances of the following (the “***Exempted Securities***”):

(1) shares of Common Stock upon the conversion of the Preferred Stock outstanding immediately following the Effective Time;

(2) shares of Common Stock and options, warrants or other rights to purchase Common Stock issued or issuable to employees, officers or directors of, or consultants or advisors to the Corporation or any subsidiary pursuant to stock grants, restricted stock purchase agreements, option plans, purchase plans, incentive programs or similar arrangements approved by the Board of Directors;

(3) shares of Common Stock issued upon the exercise or conversion of Options or Convertible Securities outstanding as of immediately following the Effective Time;

(4) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made pursuant to Section 4(e), 4(f), 4(g) or 4(h) hereof;

(5) shares of Common Stock issued or issuable pursuant to a bona fide, firmly underwritten public offering pursuant to a registration statement filed under the

Securities Act pursuant to which certain outstanding shares of Preferred Stock are automatically converted into Common Stock pursuant to an Automatic Conversion Event;

(6) shares of Common Stock issued or issuable pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, *provided*, that such issuances are approved by the Board of Directors, which must include the affirmative approval of at least one of any then-serving Series A-4/A-5 Director, Series A-6 Director or Series B Director;

(7) shares of Common Stock issued or issuable in connection with any settlement approved by the Board of Directors, which must include the affirmative approval of at least one of any then-serving Series A-4/A-5 Director, Series A-6 Director or Series B Director;

(8) shares of Common Stock issued to suppliers of goods or services in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors, which must include the affirmative approval of at least one of any then-serving Series A-4/A-5 Director, Series A-6 Director or Series B Director;

(9) shares of Common Stock issued or issuable to banks, equipment lessors or other financial institutions pursuant to a debt financing or commercial leasing transaction approved by the Board of Directors, which must include the affirmative approval of one of the Series A-4/A-5 Director, the Series A-6 Director or the Series B Director;

(10) shares of Common Stock issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors, which must include the affirmative approval of at least one of any then-serving Series A-4/A-5 Director, Series A-6 Director or Series B Director;

(11) shares of Preferred Stock issued or issuable pursuant that certain Series B Preferred Stock Purchase Agreement, dated on or about the date of the first issuance and sale of shares of Series B Preferred Stock, as amended and/or restated from time to time, or pursuant to convertible promissory notes or warrants outstanding immediately prior to the Effective Time, and shares of Common Stock issued or issuable upon conversion such shares of Preferred Stock; and

(12) any other shares of Common Stock issued or issuable, provided that holders of a majority of the then outstanding shares of the particular series of Preferred Stock which would be affected if such shares were not excluded from the definition of Additional Shares of Common, voting as a separate series, expressly designate in writing such issuance as being excluded from the definition of Additional Shares of Common hereunder.

(ii) *No Adjustment of Conversion Price.* No adjustment in the Conversion Price of a particular series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share (as determined pursuant to Section 4(d)(v)) for an Additional Share of Common issued or deemed to be issued by the Corporation is (A) with respect to the Series A-2 Preferred Stock, Series A-3 Preferred Stock,

Series A-4 Preferred Stock, Series A-5 Preferred Stock, Series A-6 Preferred Stock, Series B Preferred Stock and Series B-1 Preferred Stock, less than the Conversion Price for such series of Preferred Stock in effect on the date of, and immediately prior to, such issuance or (B) with respect to the Series A-1 Preferred Stock, less than the Original Issue Price of the Series A-5 Preferred Stock, subject to adjustment for Recapitalizations with respect to the Series A-5 Preferred Stock.

(iii) ***Deemed Issue of Additional Shares of Common.*** In the event the Corporation at any time or from time to time after the Effective Time shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion, exercise or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion, exercise or exchange of the underlying securities, shall be deemed to have been issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, *provided* that in any such case in which shares are deemed to be issued:

(1) no further adjustment in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock in connection with the exercise of such Options or conversion, exercise or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for, or if the terms of any such Options or Convertible Securities are revised to provide for, any change in the consideration payable to the Corporation or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities such as this Section 4(d) or pursuant to Recapitalization provisions of such Options or Convertible Securities such as Sections 4(e), 4(f), 4(g) and 4(h) hereof), the Conversion Price of each series of Preferred Stock and any subsequent adjustments based thereon shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount above the lower of (A) the Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Options or Convertible Securities or (B) the Conversion Price that would have resulted from any other issuances of Additional Shares of Common and any other adjustments provided for herein between the original adjustment date and such readjustment date;

(4) upon the expiration of any such Options or any rights of conversion, exercise or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price of each series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

(a) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion, exercise or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of such exercised Options plus the consideration actually received by the Corporation upon such exercise or for the issue of all such Convertible Securities which were actually converted, exercised or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion, exercise or exchange, and

(b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 4(d)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(5) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Section 4(d)(iii) as of the actual date of their issuance.

(iv) *Adjustment of Conversion Price Upon Issuance of Additional Shares of Common.*

(1) In the event this Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Section 4(d)(iii)) without consideration or for a consideration per share less than the applicable Conversion Price of the Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock, Series A-5 Preferred Stock, Series A-6 Preferred Stock, Series B Preferred Stock or Series B-1 Preferred Stock in effect on the date of and immediately prior to such issue, then the Conversion Price of any such affected series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the applicable Conversion Price of such series by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares which the aggregate consideration received (or deemed received) by the Corporation for the total number of Additional Shares of Common so issued would purchase at such Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common so issued (or deemed issued).

(2) In the event this Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Section 4(d)(iii)) without consideration or for a consideration per share less than the Original Issue Price of the Series B-1 Preferred Stock (subject to adjustment for Recapitalizations with respect to the Series B-1 Preferred Stock), then the Conversion Price of the Series A-1 Preferred Stock shall be

reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the Conversion Price of the Series A-1 Preferred Stock by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares which the aggregate consideration received (or deemed received) by the Corporation for the total number of Additional Shares of Common so issued would purchase at the Original Issue Price of the Series B-1 Preferred Stock (subject to adjustment for Recapitalizations with respect to the Series B-1 Preferred Stock), and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common so issued (or deemed issued).

(3) Notwithstanding the foregoing, the Conversion Price of any series of Preferred Stock shall not be reduced at such time if the amount of such reduction would be less than \$0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal \$0.01 or more in the aggregate; provided that any such reduction, regardless of amount, shall be made immediately prior to the conversion of any shares of Preferred Stock.

(4) For the purposes of this Section 4(d)(iv), all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(v) ***Determination of Consideration.*** For purposes of this Section 4(d), the consideration received by the Corporation for the issue (or deemed issue) of any Additional Shares of Common shall be computed as follows:

(1) ***Cash and Property.*** Such consideration shall:

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with such issuance;

(b) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors, which must include the affirmative approval of at least one of any then-serving Series A-4/A-5 Director, Series A-6 Director or Series B Director; and

(c) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (a) and (b) above, as reasonably determined in good faith by the Board of Directors, which must include the affirmative approval of at least one of any then-serving Series A-4/A-5 Director, Series A-6 Director or Series B Director.

(2) ***Options and Convertible Securities.*** The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to Section 4(d)(iii) shall be determined by dividing

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion, exercise or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion, exercise or exchange of such Convertible Securities by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion, exercise or exchange of such Convertible Securities.

(e) ***Adjustments for Subdivisions or Combinations of Common Stock.*** In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(f) ***Adjustments for Subdivisions or Combinations of Preferred Stock.*** In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) ***Adjustment for Dividends and Distributions.***

(i) If the Corporation, at any time or from time to time after the Effective Time, makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in shares of Common Stock, in each such event the Conversion Price then in effect for each series of Preferred Stock 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 the Conversion Price then in effect for such series of Preferred Stock by a fraction (i) 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 (ii) 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, the Conversion Price for each series of Preferred Stock shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this paragraph 4(g) to reflect the actual payment of such dividend or distribution.

(ii) If the Corporation at any time or from time to time after the Effective Time makes or issues, 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 Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 2 do not apply to such dividend or distribution, then and in each such event the holders of Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

(h) **Adjustments for Reclassification, Exchange and Substitution.** Subject to Section 3 ("**Liquidation Rights**"), if the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock or cash or other property, whether by Recapitalization, capital reorganization, reclassification, merger or otherwise (other than a subdivision or combination of shares or dividend provided for above), then, in any such event, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock deliverable upon conversion of such series of Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares. For the avoidance of doubt, nothing in this Section 4(h) shall be construed as preventing the holders of Preferred Stock from seeking any appraisal rights to which they are otherwise entitled under the Delaware General Corporation Law in connection with a merger triggering an adjustment hereunder, nor shall this Section 4(h) be deemed conclusive evidence of the fair value of the shares of Preferred Stock in any such appraisal proceeding.

(i) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of the Conversion Price of any series of Preferred Stock pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of the affected series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written

request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price of each series of Preferred Stock at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of each series of Preferred Stock.

(j) ***Waiver of Adjustment of Conversion Price.*** Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived by the consent or vote of the holders of a majority of the outstanding shares of such series either before or after the issuance causing the adjustment. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

(k) ***Notices of Record Date.*** In the event that this Corporation shall propose at any time:

(i) to declare any Distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iii) to voluntarily liquidate or dissolve or to enter into any transaction deemed to be a liquidation, dissolution or winding up of the Corporation pursuant to Section 3(d);

then, in connection with each such event, this Corporation shall send to the holders of the Preferred Stock at least ten (10) days' prior written notice of (x) the date on which a record shall be taken for such Distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto and, if applicable, the amount and character of such Distribution) or (y) the effective date on which the transaction is proposed to take place and the date for determining rights to vote in respect of the matters referred to in (ii) and (iii) above.

Such written notice shall be given by first class mail (or express courier), postage prepaid, addressed to the holders of Preferred Stock at the address for each such holder as shown on the books of the Corporation and shall be deemed given on the date such notice is mailed.

The notice provisions set forth in this section may be shortened or waived prospectively or retrospectively by the consent or vote of the holders of a majority of the Preferred Stock, voting together as a single class and on an as-converted basis.

(l) ***Reservation of Stock Issuable Upon Conversion.*** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the 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 of the Preferred Stock, the Corporation will take such corporate action as may,

in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

5. **Voting.**

(a) **Restricted Class Voting.** Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(b) **No Series Voting.** Other than as provided herein or required by law, there shall be no series voting.

(c) **Preferred Stock.** Each holder of Preferred Stock shall be entitled to the number of votes equal to (i) the number of shares of Common Stock into which the shares of Preferred Stock held by such holder could be converted as of the record date fixed for a stockholders meeting or the effective date of a written consent in the case of matters on which the holders of Common Stock and the holders of Preferred Stock vote together as a single class or (ii) the number of shares of Preferred Stock held by such holder as of the record date fixed for a stockholders meeting or the effective date of a written consent in the case of matters on which the holders of Preferred Stock or any series of Preferred Stock vote as a separate class. The holders of shares of the Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote and may act by written consent in the same manner as the Common Stock. Holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted, and any fractional voting rights resulting from the above formula in the case of matters on which the holders of Common Stock and the holders of Preferred Stock vote together as a single class (after aggregating all shares of Common Stock into which shares of Preferred Stock held by each holder could be converted) shall be disregarded.

(d) **Election of Directors.** So long as at least 5,000,000 shares of the Series B Preferred Stock (as adjusted for Recapitalizations) remain outstanding, the holders of Series B Preferred Stock, voting as a separate class, shall be entitled to elect one member of the Board of Directors (the "**Series B Director**"). So long as at least 5,000,000 shares of the Series A-6 Preferred Stock (as adjusted for Recapitalizations) remain outstanding, the holders of Series A-6 Preferred Stock, voting as a separate class, shall be entitled to elect one member of the Board of Directors (the "**Series A-6 Director**"). So long as at least 5,000,000 shares of the Series A-4 Preferred Stock and Series A-5 Preferred Stock (as adjusted for Recapitalizations) remain outstanding, the holders of Series A-4 Preferred Stock and Series A-5 Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect one member of the Board of Directors (the "**Series A-4/A-5 Director**"). So long as at least 5,000,000 shares of the Series A-2 Preferred Stock (as adjusted for Recapitalizations) remain outstanding, the holders of Series A-2 Preferred Stock, voting as a separate class, shall be entitled to elect one member of the Board of Directors (the "**Series A-2 Director**" and together with the Series B Director, the Series A-6 Director and the Series A-4/A-5 Director, the "**Preferred Directors**"). The remaining members of the Board of Directors shall be elected by the holders of a majority of the Common Stock and the Preferred Stock, voting together as a single class and on an as-converted basis (each an "**Mutual Director**" and together the "**Mutual Directors**").

(e) **Adjustment in Authorized Common Stock.** Subject to the terms of Section 7 hereof, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by, in addition to any vote of holders of Preferred Stock that may be required hereunder, an affirmative vote of the holders of a majority of the outstanding Preferred Stock and Common Stock, voting together as a single class on an as-converted basis.

(f) **Common Stock.** Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held.

6. **Redemption.** Except as expressly set forth herein, the Preferred Stock is not redeemable.

7. **Amendments and Changes.**

(a) As long as any of the Preferred Stock remains outstanding, the Corporation shall not (whether by merger, Recapitalization or otherwise), without first obtaining the approval (by vote or written consent as provided by law) of the holders of a majority of the outstanding shares of the Preferred Stock, voting together as a single class on an as-converted basis:

(i) amend, alter or repeal any provision of the Certificate of Incorporation or bylaws of the Corporation, whether by merger, consolidation or otherwise;

(ii) increase or decrease (other than for decreases resulting from conversion of the Preferred Stock) the authorized number of shares of Preferred Stock or any series thereof;

(iii) authorize, create (by reclassification, merger or otherwise) or issue any new class or series of equity security (including any security convertible into or exercisable for any equity security) having rights, preferences or privileges senior to or on a parity with any series of the Preferred Stock;

(iv) effect or pay any Distribution on the Preferred Stock or Common Stock of the Corporation;

(v) exchange or reclassify or effect a recapitalization of any security of the Corporation;

(vi) purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend on any shares of capital stock of the Corporation other than (i) redemptions of or dividends or distributions on the Preferred Stock as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock, (iii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at no greater than the original purchase price thereof, or (iv) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries at a price not greater than

the amount paid by such persons for such shares pursuant to rights of first refusal contained in agreements providing for such right;

(vii) enter into any transaction or series of related transactions in excess of \$500,000 with an officer, director, employee or stockholder of the Corporation or any affiliate, officer, director, employee or stockholder of a stockholder of the Corporation, excluding any such transaction approved by the Board of Directors, including the approval of a majority of the disinterested members thereof;

(viii) adopt, materially amend or terminate any equity incentive plan of the Corporation, including any increase in the number of shares authorized for issuance thereunder;

(ix) materially change the business of the Corporation or any of its subsidiaries;

(x) incur indebtedness in excess of \$500,000 in the aggregate, excluding trade credit incurred in the ordinary course of business and any indebtedness that is approved by the Board of Directors;

(xi) enter into any material agreement, transaction or series of related transactions with respect to any material intellectual property assets of the Corporation, unless approved by the Board of Directors;

(xii) increase the authorized size of the Board of Directors to a number of directors greater than eleven (11);

(xiii) enter into any transaction or series of related transactions deemed to be a Liquidation pursuant to Section 3(d); or

(xiv) amend this Section 7(a).

8. **Notices.** Any notice required by the provisions of this Article V to be given to the holders of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

9. **Reissuance of Shares.** Shares of Preferred Stock acquired by the Corporation by reason of purchase, redemption, conversion or otherwise shall be cancelled and shall not be issuable by the Corporation.

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE VIII

Unless otherwise set forth herein, the number of directors that constitute the Board of Directors shall be fixed by, or in the manner provided in, the Bylaws of the Corporation.

ARTICLE IX

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

ARTICLE X

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

2. The Corporation shall, to the extent permitted by the Delaware General Corporation Law, as it presently exists or may hereafter be amended from time to time, indemnify any director of the Corporation, and have the power to indemnify any other 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 the Corporation or is or was serving at the request of the 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.

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

ARTICLE XI

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the 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 of Directors or in the Bylaws of the Corporation.

ARTICLE XII

The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An “*Excluded Opportunity*” is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of the Corporation who is affiliated with any venture capital or professional investment fund and is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock that is a venture capital or professional investment fund or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, “*Covered Persons*”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Corporation.

ARTICLE XIII

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery in the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the Delaware General Corporation Law or the Corporation’s certificate of incorporation or bylaws or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten (10) days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. If any provision or provisions of this Article XIII shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article XIII (including, without limitation, each portion of any sentence of this Article XIII containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.