

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM442419

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	MERGER AND CHANGE OF NAME		
<b>EFFECTIVE DATE:</b>	07/29/1999		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Vitria Technology, Inc.		07/29/1999	Corporation: CALIFORNIA
<b>NEWLY MERGED ENTITY DATA</b>			
<b>Name</b>	<b>Execution Date</b>	<b>Entity Type</b>	
Vitria Acquisition Corporation	07/29/1999	Corporation: DELAWARE	
<b>MERGED ENTITY'S NEW NAME (RECEIVING PARTY)</b>			
<b>Name:</b>	Vitria Technology, Inc.		
<b>Street Address:</b>	945 Stewart Drive		
<b>City:</b>	Sunnyvale		
<b>State/Country:</b>	CALIFORNIA		
<b>Postal Code:</b>	94085		
<b>Entity Type:</b>	Corporation: DELAWARE		
<b>PROPERTY NUMBERS Total: 2</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	75472629	BUSINESSWARE	
<b>Serial Number:</b>	75165359	VITRIA	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	2025858080		
<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>	2025858000		
<b>Email:</b>	nptm@nixonpeabody.com		
<b>Correspondent Name:</b>	David L. May, Nixon Peabody LLP		
<b>Address Line 1:</b>	799 9th Street NW		
<b>Address Line 2:</b>	Suite 500		
<b>Address Line 4:</b>	Washington, D.C. 20001-4501		
<b>ATTORNEY DOCKET NUMBER:</b>	002854-64		
<b>NAME OF SUBMITTER:</b>	Colleen M. Raimond		
<b>SIGNATURE:</b>	/Colleen M. Raimond/		

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DATE SIGNED:

09/08/2017

**Total Attachments: 54**

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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 ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "VITRIA TECHNOLOGY, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE TWENTY-FIRST DAY OF JUNE, A.D. 1999, AT 4 O'CLOCK P.M.

CERTIFICATE OF AGREEMENT OF MERGER, CHANGING ITS NAME FROM "VITRIA ACQUISITION CORPORATION" TO "VITRIA TECHNOLOGY, INC.", FILED THE TWENTY-NINTH DAY OF JULY, A.D. 1999, AT 11 O'CLOCK A.M.

RESTATED CERTIFICATE, FILED THE TWENTY-SECOND DAY OF SEPTEMBER, A.D. 1999, AT 7:30 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE THIRTY-FIRST DAY OF JULY, A.D. 2000, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-SEVENTH DAY OF MAY, A.D. 2003, AT 8:24 O'CLOCK A.M.

CERTIFICATE OF MERGER, FILED THE SEVENTH DAY OF MARCH, A.D. 2007, AT 4:07 O'CLOCK P.M.

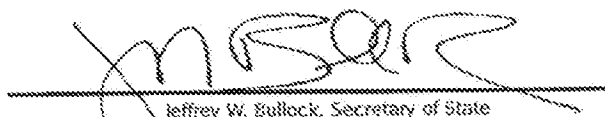
AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF

3059682 8100H

141511955



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: 1964941

DATE: 12-16-14

TRADEMARK  
REEL: 006150 FRAME: 0004

# Delaware

PAGE 2

*The First State*

THE AFORESAID CERTIFICATE OF MERGER IS THE SEVENTH DAY OF MARCH,  
A.D. 2007, AT 4:30 O'CLOCK P.M.

RESTATED CERTIFICATE, FILED THE TWENTY-FIFTH DAY OF JANUARY,  
A.D. 2008, AT 5:59 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-EIGHTH DAY OF  
AUGUST, A.D. 2014, AT 8:24 O'CLOCK P.M.

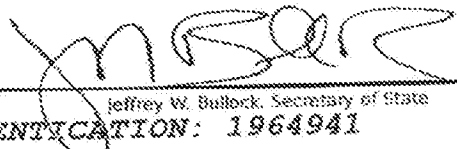
AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID  
CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE  
AFORESAID CORPORATION, "VITRIA TECHNOLOGY, INC."

3059682 8100H

141511955

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: 1964941

DATE: 12-16-14

TRADEMARK  
REEL: 006150 FRAME: 0005

**CERTIFICATE OF INCORPORATION  
OF  
VITRIA ACQUISITION CORPORATION**

The undersigned, a natural person (the "Sole Incorporator"), for the purposes of organizing a corporation to conduct the business and promote the purposes hereinafter stated, under the provisions and subject to the requirements of the laws of the State of Delaware hereby certifies that:

**I.**

The name of the corporation is **VITRIA ACQUISITION CORPORATION** (the "Corporation" or the "Company").

**II.**

The address of the registered office of the Corporation in the State of Delaware is:

Corporation Service Company  
1013 Centre Road  
Wilmington, DE 19805  
County of New Castle

The name of the Corporation's registered agent at said address is Corporation Service Company.

**III.**

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

**IV.**

A. This Corporation is authorized to issue two classes of stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*." The total number of shares which the corporation is authorized to issue is Sixty Seven Million (67,000,000) shares. Fifty One Million (51,000,000) shares shall be Common Stock (the "*Common Stock*"), each having a par value of one-tenth of one cent (\$.001). Sixteen Million (16,000,000) shares shall be Preferred Stock (the "*Preferred Stock*"), each having a par value of one-tenth of one cent (\$.001).

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, within the limitations and restrictions stated in this Certificate of Incorporation (the "*Certificate*"), by filing a certificate (a "*Preferred Stock Designation*") pursuant to the Delaware General Corporation Law ("DGCL"), to fix or alter the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption

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STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
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(including sinking fund provisions), the redemption price or prices, the liquidation preferences of any wholly unissued series of Preferred Stock and the number of shares constituting any such series and the designation thereof or any of them; and to increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

C. One Million Five Hundred Nineteen Thousand Five Hundred Eighty Two (1,519,582) of the authorized shares of Preferred Stock are hereby designated "*Series A Preferred Stock*" (the "*Series A Preferred*"), Nine Hundred Fifty Thousand One Hundred Sixty Three (950,163) of the authorized shares of Preferred Stock are hereby designated "*Series A1 Preferred Stock*" (the "*Series A1 Preferred*"), Six Million (6,000,000) of the authorized shares of Preferred Stock are hereby designated "*Series B Preferred Stock*" (the "*Series B Preferred*") and Five Million (5,000,000) of the authorized shares of Preferred Stock are hereby designated "*Series C Preferred Stock*" (the "*Series C Preferred*") and One Million Two Hundred Thousand (1,200,000) of the authorized shares of Preferred Stock are hereby designated "*Series D Preferred Stock*" (the "*Series D Preferred*").

D. The rights, preferences, privileges, restrictions and other matters relating to the Series A Preferred, Series A1 Preferred, Series B Preferred, Series C Preferred and Series D Preferred (collectively "*Designated Preferred*") are as follows:

1. **Dividend Rights.**

a. Holders of the Series C Preferred, in preference to the holders of Series A Preferred, Series A1 Preferred, Series B Preferred and Series D Preferred (the "*Junior Preferred*"), Common Stock or other capital stock of the Company ("*Junior Stock*"), shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of eight percent (8%) of the Original Issue Price (as hereinafter defined) of the Series C Preferred per annum on each outstanding share of Series C Preferred. Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be noncumulative. The Series C Preferred "*Original Issue Price*" shall be \$4.02 per share (as adjusted for stock dividends, combinations, splits, recapitalizations and the like with respect to such shares).

b. Holders of Series A Preferred, Series A1 Preferred, Series B Preferred and Series D Preferred, in preference to the holders of any Junior Stock, Common Stock or other capital stock of the Company, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of eight percent (8%) of their applicable Original Issue Price (as hereinafter defined) per annum on each outstanding share of Series A Preferred, Series A1 Preferred, Series B Preferred and Series D Preferred, respectively. Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be noncumulative. The "*Original Issue Price*" of the Series A Preferred, Series A1 Preferred, Series B Preferred and Series D Preferred shall be

\$0.3555, \$6101, \$1.8135 and \$4.50, respectively, (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares).

c. So long as any shares of Designated Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared nor shall any other distribution be made, on any Junior Stock, nor shall any shares of any Junior Stock of the Company be purchased, redeemed, or otherwise acquired for value by the Company (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer) until all dividends set forth in Sections 1(a) and 1(b) above on the Designated Preferred shall have been paid or declared and set apart. In the event dividends are paid on any share of Common Stock, an additional dividend shall be paid with respect to all outstanding shares of the Designated Preferred in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock. The provisions of this Section 1(c) shall not, however, apply to (i) a dividend payable in Common Stock, (ii) the acquisition of shares of any Junior Stock in exchange for shares of any other Junior Stock or (iii) any repurchase of any outstanding securities of the Company that is approved by the Company's Board of Directors. The holders of the Designated Preferred expressly waive their rights, if any, as described in the California Corporation Code Sections 502, 503 and 506 as they relate to repurchase of shares upon termination of employment.

## 2. Voting Rights.

a. **General Rights.** Except as otherwise provided herein or as required by law, the Designated Preferred shall be voted with the shares of the Common Stock of the Company and not as separate classes, at any annual or special meeting of shareholders of the Company, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Designated Preferred shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Designated Preferred are convertible (pursuant to Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

b. **Separate Vote of Designated Preferred.** For so long as at least One Hundred Fifty Thousand (150,000) shares of Designated Preferred (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Designated Preferred) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding Designated Preferred shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration, or repeal of any provision of the Certificate or the Bylaws of the Company that changes or alters the preferences, rights or privileges of the Designated Preferred;



(ii) Any redemption, repurchase, payment of dividends or other distributions with respect to Junior Stock (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer);

(iii) Any action that creates (by reclassification or otherwise) any new class or series of shares having rights, preferences, or privileges senior, or pari passu with, to the Designated Preferred;

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

(v) Any action that results in the payment or declaration of a dividend on any shares of Common Stock; or

(vi) Any amendment, alteration or repeal of any provision of the Certificate or the Bylaws of the Company that increases the maximum authorized number of directors to greater than seven (7).

c. **Election of Directors.** Subject to Section 2(b) herein, the Board of Directors of the Company shall consist of the number of directors set forth in the Bylaws. The holders of the Designated Preferred shall have the right, voting together as a separate class, to elect two (2) directors at each meeting or pursuant to each consent of the Company's shareholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors. The holders of the outstanding Common Stock shall have the right, voting together as a separate class, to elect three (3) directors at each meeting or pursuant to each consent of the Company's shareholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors. Any remaining directors shall be elected by the holders of the Common Stock and Designated Preferred voting together as a class, at each meeting or pursuant to each consent of the Company's shareholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

### 3. Liquidation Rights.

a. Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Junior Preferred or Junior Stock, the holders of the Series C Preferred shall be entitled to be paid out of the assets of the Company an amount per share of the Series C Preferred equal to the Series C Preferred Original Issue Price plus all declared and unpaid dividends on such shares of the Series C Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of the Series C Preferred held by them (the "*Series C Preferred Liquidation Preference*"). If, upon any liquidation, distribution or winding up of the Company, the assets of the Company shall be insufficient to

make payment in full to the holders of the Series C Preferred of the Series C Preferred Liquidation Preference set forth above, then such assets shall be distributed among the holders of the Series C Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

b. After the payment of the Series C Preferred Liquidation Preference as set forth in Section 3(a) above, the holders of the Junior Preferred shall be entitled to be paid out of the assets of the Company an amount per share of Series A Preferred, Series A1 Preferred, Series B Preferred and Series D Preferred, respectively, equal to the applicable Original Issue Price for each series (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), plus all declared and unpaid dividends on such shares of Junior Preferred for each share of Preferred Stock held by them (collectively, the "*Junior Preferred Liquidation Preferences*"). If, upon any liquidation, distribution or winding up of the Company, the assets of the Company shall be insufficient to make payment in full to the holders of the Junior Preferred of the Junior Preferred Liquidation Preferences set forth above, then such assets shall be distributed among the holders of the Junior Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

c. After the payment of the Series C Preferred Liquidation Preference as set forth in Section 3(a) above and the payment of the Junior Preferred Liquidation Preferences as set forth in Section 3(b) above, the holders of the Series C Preferred shall be entitled to be paid out of the remaining assets of the Company an additional amount equal to the difference between two times its Original Issue Price (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) and the Series C Preferred Liquidation Preference issued pursuant to Section 3(a) above (the "*Additional Series C Preferred Liquidation Preference*"). If, upon any liquidation, distribution or winding up of the Company, the assets of the Company shall be insufficient to make payment in full to the holders of the Series C Preferred of the Additional Series C Preferred Liquidation Preference set forth above, then such assets shall be distributed among the holders of the Series C Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

d. After the payment of the Series C Liquidation Preference as set forth in Section 3(a) above, the payment of the Junior Preferred Liquidation Preferences as set forth in Section 3(b) above and the payment of the Additional Series C Preferred Liquidation Preference set forth in Section 3(c) above, the assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock and Designated Preferred on an as-if-converted to Common Stock basis; provided that (i) the amount distributable and distributed to the holders of Series C Preferred pursuant to this Section 3(d) shall be reduced by an amount per share equal to the total of the Series C Preferred Liquidation Preference and Additional Series C Preferred Liquidation Preference, and (ii) no further distribution to the holders of Junior Preferred pursuant to this Section 3(d) shall be made following the time as such holders of Junior Preferred have received an aggregate amount per share of Junior Preferred equal to three (3) times the applicable Original Issue Price for such series of Junior Preferred (including the amount distributed pursuant to Section 3(b) above) (as

adjusted for any stock dividends, combinations, splits, recapitalizations and the like) with respect to the Junior Preferred.

e. The following events shall be considered a liquidation under this Section 3:

(i) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the shareholders of the Company immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the Company's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions in which in excess of fifty percent (50%) of the Company's voting power is transferred (an "*Acquisition*"); or

(ii) a sale, lease or other disposition of all or substantially all of the assets of the Company (an "*Asset Transfer*").

f. **Valuation of Consideration.** In the event of a deemed liquidation as described in Section 3(e) above, if the consideration received by the Company is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability:

(a) If traded on a securities exchange or the Nasdaq National Market System, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty (30) day period ending three days prior to the closing;

(b) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three days prior to the closing; and

(c) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Company and the holders of at least a majority of the voting power of all then outstanding shares of the Designated Preferred.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 3(f)(i) to reflect the approximate fair market value thereof, as mutually determined by the Company and the holders of at least a majority of the voting power of all then outstanding shares of the Designated Preferred.

g. In the event of a deemed liquidation, if the requirements of this Section 3 are not complied with, the Company shall forthwith either:

(i) cause such closing to be postponed until such time as the requirements of this Section 3 have been complied with; or

(ii) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Designated Preferred shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 4(k) hereafter.

4. **Conversion Rights.** The holders of the Designated Preferred shall have the following rights with respect to the conversion of the Series A Preferred, Series A1 Preferred, Series B Preferred, Series C Preferred and Series D Preferred into shares of Common Stock (the "**Conversion Rights**"):

a. **Optional Conversion.** Subject to and in compliance with the provisions of this Section 4, any shares of Designated Preferred may, at the option of the holder thereof, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred shall be entitled upon conversion shall be the product obtained by multiplying the Series A Conversion Rate then in effect (as hereinafter defined) by the number of shares of Series A Preferred being converted. The number of shares of Common Stock to which a holder of Series A1 Preferred shall be entitled upon conversion shall be the product obtained by multiplying the Series A1 Conversion Rate then in effect (as hereinafter defined) by the number of shares of Series A1 Preferred being converted. The number of shares of Common Stock to which a holder of Series B Preferred shall be entitled upon conversion shall be the product obtained by multiplying the Series B Conversion Rate then in effect (as hereinafter defined) by the number of shares of Series B Preferred being converted. The number of shares of Common Stock to which a holder of Series C Preferred shall be entitled upon conversion shall be the product obtained by multiplying the Series C Conversion Rate then in effect (as hereinafter defined) by the number of shares of Series C Preferred being converted. The number of shares of Common Stock to which a holder of Series D Preferred shall be entitled upon conversion shall be the product obtained by multiplying the Series D Conversion Rate then in effect (as hereinafter defined) by the number of shares of Series D Preferred being converted.)

b. **Conversion Rates.** The conversion rate in effect at any time for conversion of the Series A Preferred (the "**Series A Conversion Rate**") shall be the quotient obtained by dividing the Original Issue Price of the Series A Preferred by the Series A Conversion Price (as hereinafter defined), calculated as provided in this Section 4. The conversion rate in effect at any time for conversion of the Series A1 Preferred (the "**Series A1 Conversion Rate**") shall be the quotient obtained by dividing the Original Issue Price of the Series A1 Preferred by the Series A1 Conversion Price (as hereinafter defined), calculated as provided in this Section 4. The conversion rate in effect at any time for conversion of the Series B Preferred (the "**Series B Conversion Rate**") shall be the quotient obtained by dividing the Original Issue Price of the Series B Preferred by the Series B Conversion Price (as hereinafter defined), calculated as provided in this Section 4. The conversion rate in effect at any time for conversion of the Series C Preferred (the "**Series C Conversion Rate**") shall be quotient obtained

by dividing the Original Issue Price of the Series C Preferred by the Series C Conversion Price (as hereinafter defined), calculated as provided in this Section 4. The conversion rate in effect at any time for conversion of the Series D Preferred (the "*Series D Conversion Rate*") shall be the quotient obtained by dividing the Original Issue Price of the Series D Preferred by the Series D Conversion Price (as hereinafter defined), calculated as provided in this Section 4.

c. **Conversion Price.** The respective conversion prices for the Series A Preferred, Series A1 Preferred, Series B Preferred, Series C Preferred and Series D Preferred shall initially be the Original Issue Price of the Series A Preferred (the "*Series A Conversion Price*"), the Original Issue Price of the Series A1 Preferred (the "*Series A1 Conversion Price*"), the Original Issue Price of the Series B Preferred (the "*Series B Conversion Price*"), the Original Issue Price of the Series C Preferred (the "*Series C Conversion Price*") and the Original Issue Price of the Series D Preferred (the "*Series D Conversion Price*"). Such initial Series A Conversion Price, Series A1 Conversion Price, Series B Conversion Price, Series C Conversion Price and Series D Conversion Price shall be adjusted from time to time in accordance with this Section 4. All references to the Series A Conversion Price, Series A1 Conversion Price, Series B Conversion Price, Series C Conversion Price and Series D Conversion Price (collectively, "*Conversion Prices*") herein shall mean such prices as so adjusted.

d. **Mechanics of Conversion.** Each holder of Designated Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Designated Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Designated Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Designated Preferred being converted. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Designated Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering Designated Preferred for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion of the Designated Preferred shall not be deemed to have converted such Designated Preferred until immediately prior to the closing of such sale of securities.

e. **Adjustment for Stock Splits and Combinations.** If the Company shall at any time or from time to time after the date that the first share of the Series D Preferred is issued (the "*Original Issue Date*") effect a subdivision of the outstanding Common Stock

without a corresponding subdivision of the Designated Preferred, the Conversion Prices in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Company shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Designated Preferred, Conversion Prices in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

**f. Adjustment for Common Stock Dividends and Distributions.**

If the Company at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the Conversion Prices that are then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price, Series A1 Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as applicable, then in effect by a fraction (1) 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 (2) 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 Prices shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Prices shall be adjusted pursuant to this Section 4(f) to reflect the actual payment of such dividend or distribution.

**g. Adjustment for Reclassification, Exchange and Substitution.**

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

**h. Reorganizations, Mergers, Consolidations or Sales of Assets.**

If at any time or from time to time after the Original Issue Date there is a capital reorganization of the Common Stock (other than an Acquisition or Asset Transfer as defined in Section 3(e) or a

recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4), as a part of such capital reorganization, provision shall be made so that the holders of the Designated Preferred shall thereafter be entitled to receive upon conversion of the Designated Preferred the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Designated Preferred after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Conversion Prices then in effect and the number of shares issuable upon conversion of the Designated Preferred) shall be applicable after that event and be as nearly equivalent as practicable in relation to any shares of stock or the securities or property thereafter deliverable upon conversion of the Designated Preferred.

i. **Sale of Shares Below Conversion Prices.**

(i) If at any time or from time to time after the Original Issue Date, the Company issues or sells or is deemed by the express provisions of this Section 4(i) to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), other than as a dividend or other distribution on any class of stock as provided in Section 4(f) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4(e) above, for an Effective Price (as hereinafter defined) less than the then effective Series A Conversion Price, Series A1 Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as applicable, then and in each such case the then existing Series A Conversion Price, Series A1 Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as applicable, shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Series A Conversion Price, Series A1 Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as applicable, by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (as defined in Section 4(i)(ii)) by the Company for the total number of Additional Shares of Common Stock (as hereinafter defined) so issued would purchase at such Series A Conversion Price, Series A1 Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as applicable, and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Designated Preferred could be converted if fully converted on the day immediately preceding the given date and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities on the day immediately preceding the given date.

(ii) For the purpose of making any adjustment required under this Section 4(i), the consideration received by the Company for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by the Company before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors irrespective of any accounting treatment and (C) if Additional Shares of Common Stock, Convertible Securities (as hereinafter defined) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options irrespective of any accounting treatment.

(iii) For the purpose of the adjustment required under this Section 4(i), if the Company issues or sells any rights or options for the purchase of, or stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") and if the Effective Price of such Additional Shares of Common Stock is less than the Series A Conversion Price, Series A1 Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as applicable, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; provided that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses; provided further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; provided further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Series A Conversion Price, Series A1 Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as applicable, as adjusted upon the issuance of such rights, options or Convertible

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Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series A Conversion Price, Series A1 Conversion Price, Series B Conversion Price, Series C Conversion Price and the Series D Conversion Price, as applicable, as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series A Conversion Price, Series A1 Conversion Price, Series B Conversion Price, Series C Conversion Price and the Series D Conversion Price, as applicable, which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Designated Preferred.

(iv) "*Additional Shares of Common Stock*" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(i), whether or not subsequently reacquired or retired by the Company other than (1) shares of Common Stock issued upon conversion of the Designated Preferred, (2) Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) after the Original Issue Date to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board of Directors, (3) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of such Original Issue Date, (4) shares of Common Stock or Convertible Securities issued in connection with real estate transactions, equipment leases or commercial credit agreements with lessors or financial institutions, or in connection with development or licensing transactions with third party operating companies approved by the Board of Directors, (5) Common Stock or Convertible Securities issued in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board of Directors of the Company and (6) up to fifty thousand (50,000) shares of Series C Preferred Stock and Common Stock issuable upon conversion of fifty thousand (50,000) shares of Series C Preferred Stock approved by the Board of Directors of the Company for issuance as a gift either for charitable purposes or to certain of the Company's current and potential customers or strategic partners. The "*Effective Price*" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company under this Section 4, into the aggregate consideration received, or deemed to have been received by the Company for such issue under this Section 4, for such Additional Shares of Common Stock."

j. **Accountants' Certificate of Adjustment.** In each case of an adjustment or readjustment of the Conversion Prices for the number of shares of Common Stock or other securities issuable upon conversion of the Designated Preferred if any Designated Preferred is then convertible pursuant to this Section 4, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Designated Preferred at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (1) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (2) the Series A Conversion Price, Series A1 Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, as applicable, at the time in effect, (3) the number of Additional Shares of Common Stock and (4) the type and amount, if any, of other property which at the time would be received upon conversion of the Series A Preferred, Series A1 Preferred, Series B Preferred, Series C Preferred or Series D Preferred, as applicable.

k. **Notices of Record Date.** Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution or (ii) any Acquisition (as defined in Section 3(e)) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section 3(e)), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Designated Preferred at least twenty (20) days prior to the record date specified therein or twenty (20) days prior to the closing of such transaction, whichever is earlier, a notice specifying (1) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (2) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective and (3) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

### 1. Automatic Conversion.

(i) Each share of Designated Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series A Conversion Price, Series A1 Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price, respectively, immediately upon the earlier of (A) the affirmative election of the holders of at least a majority of the then outstanding shares of the Designated Preferred or (B) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company at a public offering price (before underwriting discounts, commissions and fees) equal to or exceeding \$8.04 per share of Common Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares) and with aggregate proceeds to the Company (before deduction of underwriting discounts, commissions and fees) of not less than twenty million dollars (\$20,000,000). Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(ii) Upon the occurrence of the event specified in Section 4(l)(i) above, the outstanding shares of Designated Preferred 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 Company or its transfer agent; provided, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Designated Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Designated Preferred, the holders thereof shall surrender the certificates representing such shares at the office of the Company or any transfer agent therefor. Thereupon, there shall be issued and delivered to such holder promptly at such office and in his name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which such surrendered shares were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

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

n. **Reservation of Stock Issuable Upon Conversion.** The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Designated Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Designated Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Designated Preferred, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

o. **Notices.** Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified; (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day; (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

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

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

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

V.

A. The liability of the directors for monetary damages shall be eliminated to the fullest extent under applicable law.

B. This corporation is authorized to provide indemnification of agents (as defined in Section 317 of the CGCL) for breach of duty to the corporation and its shareholders through bylaw provisions or through agreements with the agents, or through shareholder resolutions, or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the CGCL, subject, at any time or times that the corporation is subject to Section 2115(b) of the CGCL, to the limits on such excess indemnification set forth in Section 204 of the CGCL.

C. The holders of the Series Preferred expressly waive their rights, if any, as described in California Code Sections 502, 503 and 506 as they relate to repurchases of shares upon termination of employment or service as a consultant or director.

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

VI.

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

A. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. Subject to Article IV Section 2, the number of directors which shall constitute the whole Board of Directors shall be fixed by the Board of Directors in the manner provided in the Bylaws.

B. Subject to the indemnification provisions in the Bylaws, the Board of Directors may from time to time make, amend, supplement or repeal the Bylaws; provided, however, that the stockholders may change or repeal any Eylaw adopted by the Board of Directors by the affirmative vote of the percentage of holders of capital stock as provided therein; and, provided further, that no amendment or supplement to the Bylaws adopted by the Board of Directors shall vary or conflict with any amendment or supplement thus adopted by the stockholders.


C. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

\* \* \* \*

The name and mailing address of the Sole Incorporator is as follows:

NAME	MAILING ADDRESS
Kris S. Tamashiro	Cooley Godward LLP 5 Palo Alto Square 3000 El Camino Real Palo Alto, CA 94306-2155

IN WITNESS WHEREOF, this Certificate has been subscribed this 21<sup>st</sup> day of June, 1999  
by the undersigned who affirms that the statements made herein are true and correct.



Kria S. Jamashiro  
Sole Incorporator

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**AGREEMENT AND PLAN OF MERGER**

THIS AGREEMENT AND PLAN OF MERGER (hereinafter called the "Merger Agreement") is made as of July 29, 1999, by and between VITRIA TECHNOLOGY, INC., a California corporation ("VITRIA California"), and VITRIA ACQUISITION CORPORATION, a Delaware corporation ("VITRIA Delaware"). VITRIA California and VITRIA Delaware are sometimes referred to as the "Constituent Corporations."

The authorized capital stock of VITRIA California consists of fifty one million (51,000,000) shares of Common Stock, no par value, and sixteen million (16,000,000) shares of Preferred Stock, no par value. The authorized capital stock of VITRIA Delaware, upon effectuation of the transactions set forth in this Merger Agreement, will consist of fifty one million (51,000,000) shares of Common Stock, \$.001 par value, and sixteen million (16,000,000) shares of Preferred Stock, \$.001 par value.

The directors of the Constituent Corporations deem it advisable and to the advantage of the Constituent Corporations that VITRIA California merge into VITRIA Delaware upon the terms and conditions herein provided.

Now, THEREFORE, the parties do hereby adopt the plan of reorganization encompassed by this Merger Agreement and do hereby agree that VITRIA California shall merge into VITRIA Delaware on the following terms, conditions and other provisions:

**1. TERMS AND CONDITIONS.**

**1.1 Merger.** VITRIA California shall be merged with and into VITRIA Delaware (the "Merger"), and VITRIA Delaware shall be the surviving corporation (the "Surviving Corporation") effective upon the date that this Merger Agreement is filed with the Secretary of State of Delaware (the "Effective Date").

**1.2 Name Change.** On the Effective Date, the name of VITRIA Delaware shall be Vitria Technology, Inc.

**1.3 Succession.** On the Effective Date, VITRIA Delaware shall continue its corporate existence under the laws of the State of Delaware, and the separate existence and corporate organization of VITRIA California, except insofar as it may be continued by operation of law, shall be terminated and cease.

**1.4 Transfer of Assets and Liabilities.** On the Effective Date, the rights, privileges, powers and franchises, both of a public as well as of a private nature, of each of the Constituent Corporations shall be vested in and possessed by the Surviving Corporation, subject to all of the disabilities, duties and restrictions of or upon each of the Constituent Corporations; and all and singular rights, privileges, powers and franchises of each of the Constituent Corporations, and all property, real, personal and mixed, of each of the Constituent Corporations, and all debts due to each of the Constituent Corporations on whatever account, and all things in action or belonging to each of the Constituent Corporations shall be transferred to and vested in the Surviving Corporation; and all property, rights, privileges, powers and franchises, and all and every other interest, shall be thereafter the property of the Surviving Corporation as they were of the Constituent Corporations, and the title to any real estate vested by deed or otherwise in either of the Constituent Corporations shall not

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revert or be in any way impaired by reason of the Merger; provided, however, that the liabilities of the Constituent Corporations and of their shareholders, directors and officers shall not be affected and all rights of creditors and all liens upon any property of either of the Constituent Corporations shall be preserved unimpaired, and any claim existing or action or proceeding pending by or against either of the Constituent Corporations may be prosecuted to judgment as if the Merger had not taken place except as they may be modified with the consent of such creditors and all debts, liabilities and duties of or upon each of the Constituent Corporations shall attach to the Surviving Corporation, and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

**1.5 Common Stock of VITRIA California and VITRIA Delaware.** On the Effective Date, by virtue of the Merger and without any further action on the part of the Constituent Corporations or their shareholders, each share of Common Stock of VITRIA California issued and outstanding immediately prior thereto shall be converted into one (1) fully paid and nonassessable share of the Common Stock of VITRIA Delaware and each share of Common Stock of VITRIA Delaware issued and outstanding immediately prior thereto shall be cancelled and returned to the status of authorized but unissued shares.

**1.6 Preferred Stock of VITRIA California and VITRIA Delaware.** On the Effective Date, by virtue of the Merger and without any further action on the part of the Constituent Corporations or their shareholders, each share of Series A Preferred Stock of VITRIA California issued and outstanding immediately prior thereto shall be converted into one (1) fully paid and nonassessable share of Series A Preferred Stock of VITRIA Delaware, each share of Series A1 Preferred Stock of VITRIA California issued and outstanding immediately prior thereto shall be converted into one (1) fully paid and nonassessable share of Series A1 Preferred Stock of VITRIA Delaware, each share of Series B Preferred Stock of VITRIA California issued and outstanding immediately prior thereto shall be converted into one (1) fully paid and nonassessable share of Series B Preferred Stock of VITRIA Delaware, each share of Series C Preferred Stock of VITRIA California issued and outstanding immediately prior thereto shall be converted into one (1) fully paid and nonassessable share of Series C Preferred Stock of VITRIA Delaware and each share of Series D Preferred Stock of VITRIA California issued and outstanding immediately prior thereto shall be converted into one (1) fully paid and nonassessable share of Series D Preferred Stock of VITRIA Delaware.

**1.7 Stock Certificates.** On and after the Effective Date, all of the outstanding certificates which prior to that time represented shares of the Common Stock or of the Preferred Stock of VITRIA California shall be deemed for all purposes to evidence ownership of and to represent the shares of VITRIA Delaware into which the shares of VITRIA California represented by such certificates have been converted as herein provided and shall be so registered on the books and records of the Surviving Corporation or its transfer agents. The registered owner of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or its transfer agent, have and be entitled to exercise any voting and other rights with respect to and to receive any dividend and other distributions upon the shares of VITRIA Delaware evidenced by such outstanding certificate as above provided.

**1.8 Options.** On the Effective Date, the Surviving Corporation will assume and continue VITRIA California's 1998 Executive Incentive Plan, 1999 Equity Incentive Plan, and 1999 Employee Stock Purchase Plan and the outstanding and unexercised portions of all options to purchase Common Stock of VITRIA California, including without limitation all options outstanding



under such stock plans and any other outstanding options, shall be converted into options of VITRIA Delaware, such that an option for one (1) share of VITRIA California shall be converted into an option for one (1) share of VITRIA Delaware, with no change in the exercise price of the VITRIA Delaware option. No other changes in the terms and conditions of such options will occur. Effective on the Effective Date, VITRIA Delaware hereby assumes the outstanding and unexercised portions of such options and the obligations of VITRIA California with respect thereto.

**1.9 Warrants.** On the Effective Date, the Surviving Corporation will assume and continue any warrants of VITRIA California, and the outstanding and unexercised portions of all warrants shall be converted into warrants of VITRIA Delaware, such that a warrant for one (1) share of VITRIA California shall be converted into a warrant for one (1) share of VITRIA Delaware, with no change in the exercise price of the VITRIA Delaware warrant. No other changes in the terms and conditions of such warrants will occur. Effective on the Effective Date, VITRIA Delaware hereby assumes the outstanding and unexercised portions of such warrants and the obligations of VITRIA California with respect thereto.

**1.10 Employee Benefit Plans.** On the Effective Date, the Surviving Corporation shall assume all obligations of VITRIA California under any and all employee benefit plans in effect as of such date. On the Effective Date, the Surviving Corporation shall adopt and continue in effect all such employee benefit plans upon the same terms and conditions as were in effect immediately prior to the Merger and shall reserve that number of shares of VITRIA Delaware Common Stock with respect to each such employee benefit plan as is proportional to the number of shares of VITRIA California Common Stock (if any) so reserved on the Effective Date.

## **2. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS.**

**2.1 Certificate of Incorporation and Bylaws.** The Certificate of Incorporation and Bylaws of VITRIA Delaware in effect on the Effective Date shall continue to be the Certificate of Incorporation and Bylaws of the Surviving Corporation, except that Article I of the Certificate of Incorporation and Bylaws of the Surviving Corporation shall, effective upon the filing of this Merger Agreement with the Secretary of State of the State of Delaware, be amended to read in its entirety as follows: "The name of this corporation is Vitria Technology, Inc."

**2.2 Directors.** The directors of VITRIA California immediately preceding the Effective Date shall become the directors of the Surviving Corporation on and after the Effective Date to serve until the expiration of their terms and until their successors are elected and qualified.

**2.3 Officers.** The officers of VITRIA California immediately preceding the Effective Date shall become the officers of the Surviving Corporation on and after the Effective Date to serve at the pleasure of its Board of Directors.

## **3. MISCELLANEOUS.**

**3.1 Further Assurances.** From time to time, and when required by the Surviving Corporation or by its successors and assigns, there shall be executed and delivered on behalf of VITRIA California such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other action, as shall be appropriate or necessary in order to vest or perfect in or to conform of record or otherwise, in the Surviving Corporation the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of VITRIA California and otherwise to carry out the purposes of this Merger Agreement, and the

officers and directors of the Surviving Corporation are fully authorized in the name and on behalf of VITRIA California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

**3.2 Amendment.** At any time before or after approval by the shareholders of VITRIA California, this Merger Agreement may be amended in any manner (except that, after the approval of the Merger Agreement by the shareholders of VITRIA California, the principal terms may not be amended without the further approval of the shareholders of VITRIA California) as may be determined in the judgment of the respective Board of Directors of VITRIA Delaware and VITRIA California to be necessary, desirable, or expedient in order to clarify the intention of the parties hereto or to effect or facilitate the purpose and intent of this Merger Agreement.

**3.3 Conditions to Merger.** The obligations of the Constituent Corporations to effect the transactions contemplated hereby is subject to satisfaction of the following conditions (any or all of which may be waived by either of the Constituent Corporations in its sole discretion to the extent permitted by law):

(a) the Merger shall have been approved by the shareholders of VITRIA California in accordance with applicable provisions of the General Corporation Law of the State of California; and

(b) VITRIA California, as sole stockholder of VITRIA Delaware, shall have approved the Merger in accordance with the General Corporation Law of the State of Delaware; and

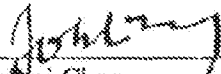
(c) any and all consents, permits, authorizations, approvals, and orders deemed in the sole discretion of VITRIA California to be material to consummation of the Merger shall have been obtained.

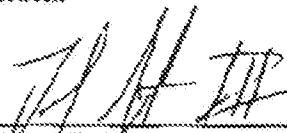
**3.4 Abandonment or Deferral.** At any time before the Effective Date, this Merger Agreement may be terminated and the Merger may be abandoned by the Board of Directors of either VITRIA California or VITRIA Delaware or both, notwithstanding the approval of this Merger Agreement by the shareholders of VITRIA California or VITRIA Delaware, or the consummation of the Merger may be deferred for a reasonable period of time if, in the opinion of the Boards of Directors of VITRIA California and VITRIA Delaware, such action would be in the best interest of such corporations. In the event of termination of this Merger Agreement, this Merger Agreement shall become void and of no effect and there shall be no liability on the part of either Constituent Corporation or its Board of Directors or shareholders with respect thereto, except that VITRIA California shall pay all expenses incurred in connection with the Merger or in respect of this Merger Agreement or relating thereto.

**3.5 Counterparts.** In order to facilitate the filing and recording of this Merger Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original.

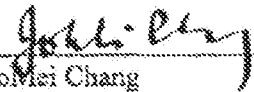
IN WITNESS WHEREOF, this Merger Agreement, having first been duly approved by the Board of Directors of VITRIA California and VITRIA Delaware, is hereby executed on behalf of each said corporation and attested by their respective officers thereunto duly authorized.


VITRIA TECHNOLOGY, INC.,  
a California corporation

By:   
Jol Mei Chang  
President

By:   
Paul Auvil, III  
Secretary

VITRIA ACQUISITION CORPORATION,  
a Delaware corporation

By:   
Jol Mei Chang  
President

By:   
Paul Auvil, III  
Secretary

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## VITRIA TECHNOLOGY, INC.

## OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

The undersigned, Jo Mei Chang and Paul Auvil, III, do hereby certify that:

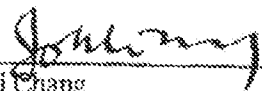
1. They are the President and Secretary, respectively, of Vitria Technology, Inc., a California corporation (the "Corporation").

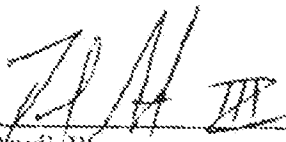
2. The Agreement and Plan of Merger attached to this Certificate providing for the merger of the Corporation with and into Vitria Acquisition Corporation, a Delaware Corporation, was duly approved by the Board of Directors and by the shareholders of the Corporation.

3. The Corporation has two authorized classes of shares, designated Common Stock and Preferred Stock. The total number of outstanding shares of Common Stock is Fifteen Million Seven Hundred Thirty-Eight Thousand Seven Hundred Seven (15,738,707). Preferred Stock is designated in five series. The total number of shares of Series A Preferred Stock outstanding is One Million Five Hundred Nineteen Thousand Five Hundred Eighty Two (1,519,582). The total number of shares of Series A1 Preferred Stock outstanding is Nine Hundred Fifty Thousand One Hundred Sixty Three (950,163). The total number of shares of Series B Preferred Stock outstanding is Five Million Two Hundred Thirty Eight Thousand Three Hundred Fifty Seven (5,238,357). The total number of shares of Series C Preferred Stock outstanding is Two Million Eight Hundred Forty Three Thousand Five Hundred Thirty Three (2,843,533). The total number of shares of Series D Preferred Stock outstanding is One Million Three Thousand Nine Hundred Eighty (1,003,980). All outstanding shares of stock were entitled to vote on the merger.

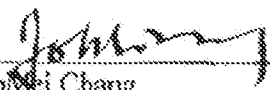
4. The terms of the Agreement and Plan of Merger were approved by the Corporation by the vote of more than (i) fifty percent (50%) of the outstanding shares of the Common Stock, (ii) fifty percent (50%) of the outstanding shares of Common Stock, Series A Preferred Stock, Series A1 Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, voting together as if the Series A Preferred, Series A1 Preferred Stock, Series B Preferred, Series C Preferred and Series D Preferred Stock had converted into Common Stock and (iii) fifty percent (50%) of the outstanding shares of Series A Preferred Stock, Series A1 Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, voting as a separate class, which, in each case, equaled or exceeded the vote required.

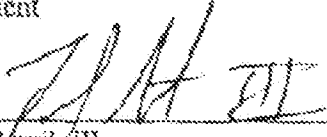
IN WITNESS WHEREOF, the undersigned have executed this Certificate this 29th day of July, 1999.

  
\_\_\_\_\_  
Jomei Chang  
President

  
\_\_\_\_\_  
Paul Avvil, III  
Secretary

Each of the undersigned declares under penalty of perjury that they have read the foregoing Certificate and knows the contents thereof and that the same is true of his own knowledge.

  
\_\_\_\_\_  
Jomei Chang  
President

  
\_\_\_\_\_  
Paul Avvil, III  
Secretary

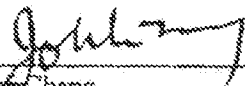
**VITRIA ACQUISITION CORPORATION**  
**OFFICERS' CERTIFICATE OF APPROVAL OF MERGER**

The undersigned, JoMei Chang and Paul Auvil, III, do hereby certify that:

1. They are the President and Secretary, respectively, of Vitria Acquisition Corporation, a Delaware corporation (the "Corporation").
2. The Agreement and Plan of Merger attached to this Certificate providing for the merger of Vitria Technology, Inc., a California corporation, with and into the Corporation was duly approved by the Board of Directors and by the stockholder of the Corporation.
3. The Corporation has two authorized classes of shares, designated Common Stock and Preferred Stock. The number of shares of Common Stock outstanding and entitled to vote upon the merger was One Hundred (100) shares of Common. There were no shares of Preferred Stock outstanding.
4. The terms of the Agreement and Plan of Merger were approved by the Corporation by a vote of the number of shares of Common Stock of the Corporation which equaled or exceeded the vote required. The percentage vote required for such approval was more than fifty percent (50%).

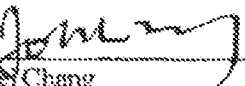
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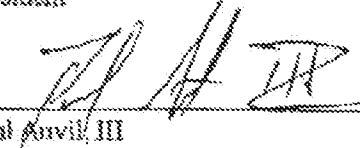
IN WITNESS WHEREOF, the undersigned have executed this Certificate this 29th day of July, 1999.

  
JoMei Chang  
President

  
Paul Auvil, III  
Secretary

Each of the undersigned declares under penalty of perjury that they have read the foregoing Certificate and knows the contents thereof and that the same is true of his own knowledge.

  
JoMei Chang  
President

  
Paul Auvil, III  
Secretary

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**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
VITRIA TECHNOLOGY, INC.**

JoMei Chang and Paul R. Auvri, III hereby certify that:

**ONE:** They are the duly elected and acting President and Secretary, respectively, of Vitria Technology, Inc., a Delaware corporation.

**TWO:** The original name of this corporation is Vitria Acquisition Corporation and the date on which the Certificate of Incorporation was originally filed with the Secretary of State of the State of Delaware is June 21, 1999.

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

**I.**

The name of the corporation is **VITRIA TECHNOLOGY, INC.** (the "Corporation" or the "Company").

**II.**

The address of the registered office of the Corporation in the State of Delaware is:

Corporation Service Company  
1013 Centre Road  
Wilmington, DE 19805  
County of New Castle

The name of the Corporation's registered agent at said address is Corporation Service Company.

**III.**

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

**IV.**

**A.** This corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the corporation is authorized to issue is two hundred fifty five million (255,000,000) shares. Two hundred fifty million (250,000,000) shares shall be Common Stock, each having a par value of



one-tenth of one cent (\$.001). Five million (5,000,000) shares shall be Preferred Stock, each having a par value of one-tenth of one cent (\$.001).

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, by filing a certificate (a "Preferred Stock Designation") pursuant to the Delaware General Corporation Law ("DGCL"), to fix or alter from time to time the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions of any wholly unissued series of Preferred Stock, and to establish from time to time the number of shares constituting any such series or any of them; and to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

#### V.

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

#### A. Management

1. The management of the business and the conduct of the affairs of the corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed exclusively by one or more resolutions adopted by the Board of Directors.

#### 2. Board of Directors

a. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, following the closing of the initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "1993 Act"), covering the offer and sale of Common Stock to the public (the "Initial Public Offering"), the directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. Directors shall be assigned to each class in accordance with a resolution or resolutions adopted by the Board of Directors. At the first annual meeting of stockholders following the closing of the Initial Public Offering, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders following the Initial Public Offering, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following the Initial Public Offering, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at

such annual meeting. During such time or times that the corporation is subject to Section 2115(b) of the California General Corporation Law ("CGCL"), this Section A.2.a of this Article V shall not be effective and Section A.2.b of this Article shall apply.

b. In the event that the corporation is subject to Section 2115(b) of the CGCL, Section A.2.a of this Article V shall not apply and all directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting.

c. No person entitled to vote at an election for directors may cumulate votes to which such person is entitled, unless, at the time of such election, the corporation (i) is subject to Section 2115(b) of the CGCL and (ii) is not a "listed" corporation or ceases to be a "listed" corporation under Section 301.5 of the CGCL. During this time, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder thinks fit. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

Notwithstanding the foregoing provisions of this section, each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

### 3. Removal of Directors

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

b. At any time or times that the corporation is not subject to Section 2115(b) of the CGCL and subject to any limitations imposed by law, Section A. 3. a. above shall no longer apply and removal shall be as provided in Section 141(k) of the DGCL.

#### 4. Vacancies

a. Subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders, except as otherwise provided by law, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified.

b. If at the time of filing any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board (as constituted immediately prior to any such increase), the Delaware Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent (10%) of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in offices as aforesaid, which election shall be governed by Section 211 of the DGCL.

c. At any time or times that the corporation is subject to Section 2115(b) of the CGCL, if, after the filling of any vacancy by the directors then in office who have been elected by stockholders shall constitute less than a majority of the directors then in office, then

(i) Any holder or holders of an aggregate of five percent (5%) or more of the total number of shares at the time outstanding having the right to vote for those directors may call a special meeting of stockholders; or

(ii) The Superior Court of the proper county shall, upon application of such stockholder or stockholders, summarily order a special meeting of stockholders, to be held to elect the entire board, all in accordance with Section 305(c) of the CGCL. The term of office of any director shall terminate upon that election of a successor.

#### B.

##### 1. Bylaw Amendments

Subject to paragraph (b) of Section 43 of the Bylaws, the Bylaws may be altered or amended or new Bylaws adopted by the affirmative vote of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of the voting stock of the corporation entitled to vote. The Board of Directors shall also have the power to adopt, amend, or repeal Bylaws.

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

3. No action shall be taken by the stockholders of the corporation except (i) at an annual or special meeting of stockholders called in accordance with the Bylaws or (ii) by written consent of stockholders in accordance with the Bylaws prior to the closing of the Initial Public Offering and following the closing of the Initial Public Offering no action shall be taken by the stockholders by written consent.

4. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the corporation shall be given in the manner provided in the Bylaws of the corporation.

#### VI.

A. The liability of the directors for monetary damages shall be eliminated to the fullest extent under applicable law.

B. This corporation is authorized to provide indemnification of agents (as defined in Section 317 of the CGCL) for breach of duty to the corporation and its shareholders through bylaw provisions or through agreements with the agents, or through shareholder resolutions, or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the CGCL, subject, at any time or times the corporation is subject to Section 2115(b) to the limits on such excess indemnification set forth in Section 204 of the CGCL.

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

#### VII.

A. The corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, except as provided in paragraph B. of this Article VII, and all rights conferred upon the stockholders herein are granted subject to this reservation.

B. Notwithstanding any other provisions of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Voting Stock required by law, this Certificate of Incorporation or any Preferred Stock Designation, following the closing of the Initial Public Offering the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of the voting stock, voting together as a single class, shall be required to alter, amend or repeal Articles V, VI, or VII of this Amended and Restated Certificate of Incorporation.

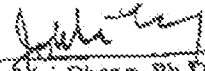
\* \* \* \*

**FOUR:** This Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of this Corporation.


**FIVE:** This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware by the Board of Directors and the stockholders of the Corporation. The total number of outstanding shares entitled to vote or act by written consent was 15,768,707 shares of Common Stock, 1,519,582 shares of Series A Preferred Stock, 5,238,357 shares of Series B Preferred Stock, 950,163 shares of Series A1 Preferred Stock, 2,843,533 shares of Series C Preferred Stock and 1,003,980 shares of Series D Preferred Stock. A majority of the outstanding shares of Common Stock and a majority of the outstanding shares of Preferred Stock approved this Restated Certificate of Incorporation by written consent in accordance with Section 228 of the General Corporation Law of the State of Delaware and written notice of such was given by the Corporation in accordance with said Section 228.

IN WITNESS WHEREOF, VITRIA TECHNOLOGY, INC. has caused this Amended and Restated Certificate of Incorporation to be signed by the President and the Secretary in Sunnyvale, California this 21<sup>st</sup> day of September, 1999.

VITRIA TECHNOLOGY, INC.

By:   
Jokei Chang, Ph.D.  
President

ATTEST:

By:   
Paul R. Auvi, III  
Secretary

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10/29/99 10:00

**CERTIFICATE OF AMENDMENT OF  
RESTATED CERTIFICATE OF INCORPORATION OF  
VITRIA TECHNOLOGY, INC.**

**JOMEI CHANG, Ph.D.** hereby certifies as follows:

**ONE:** The original name of this corporation is Vitria Acquisition Corporation and the date of filing of the original Certificate of Incorporation of this corporation with the Secretary of State of the State of Delaware is June 21, 1999.

**TWO:** That she is the duly elected and acting President and Chief Executive Officer of Vitria Technology, Inc., a Delaware corporation.

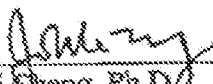
**THREE:** The Board of Directors of the Corporation, acting in accordance with the provisions of Sections 141 and 242 of the General Corporation Law of the State of Delaware, adopted resolutions amending its Restated Certificate of Incorporation as follows:

Article IV, Paragraph A shall be amended and restated to read in its entirety as follows:

"A This corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the corporation is authorized to issue is six hundred five million (605,000,000) shares. Six hundred million (600,000,000) shares shall be Common Stock, each having a par value of one-tenth of one cent (\$.001). Five million (5,000,000) shares shall be Preferred Stock, each having a par value of one-tenth of one cent (\$.001)."

**FOUR:** Thereafter, pursuant to a resolution of the Board of Directors, this Certificate of Amendment was submitted to the stockholders of the Corporation for their approval, and was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, Vitria Technology, Inc. has caused this Certificate of Amendment to be signed by its President and Chief Executive Officer this 25<sup>th</sup> day of July, 2000.

  
\_\_\_\_\_  
JoMei Chang, Ph.D.  
President and Chief Executive Officer

**CERTIFICATE OF AMENDMENT OF AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION OF VITRIA TECHNOLOGY, INC.**

JOMEI CHANG, Ph.D. hereby certifies as follows:

**ONE:** The original name of this corporation is Vitria Acquisition Corporation and the date of filing of the original Certificate of Incorporation with the Delaware Secretary of State is June 21, 1999.

**TWO:** That she is the duly elected and acting Chief Executive Officer of Vitria Technology, Inc., a Delaware corporation.

**THREE:** The Board of Directors of the Corporation, acting in accordance with the provisions of Sections 141 and 242 of the General Corporation Law of the State of Delaware adopted resolutions amending the first paragraph of Article IV, Paragraph A of the Amended and Restated Certificate of Incorporation of the Corporation to read in its entirety as follows:

"A. This Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the corporation is authorized to issue is one hundred fifty-five million (155,000,000) shares. One hundred fifty million (150,000,000) shares shall be Common Stock, each having a par value of one-tenth of one cent (\$.001). Five million (5,000,000) shares shall be Preferred Stock, each having a par value of one-tenth of one cent (\$.001). Effective as of 5:00 p.m., Eastern time, on the date this Certificate of Amendment of Amended and Restated Certificate of Incorporation is filed with the Secretary of State of the State of Delaware, each four (4) shares of the Corporation's Common Stock, par value \$.001 per share, issued and outstanding shall, automatically and without any action on the part of the respective holders thereof, be combined and converted into one (1) share of Common Stock, par value \$.001 per share, of the Corporation. No fractional shares shall be issued and, in lieu thereof, any holder of less than one share of Common Stock entitled to receive cash for such holder's fractional share based upon the closing sales price of the Corporation's Common Stock as reported on The Nasdaq National Market as of the date this Certificate of Amendment is filed with the Secretary of State of the State of Delaware."

**FOUR:** This Certificate of Amendment of Amended and Restated Certificate of Incorporation was submitted to the stockholders of the Corporation and was duly approved by the required vote of stockholders of the Corporation in accordance with Section 242 of the Delaware General Corporation Law. A majority of the outstanding shares of Common Stock, voting together as a single class, voted in favor of this Certificate of Amendment of Amended and Restated Certificate of Incorporation.

IN WITNESS WHEREOF, Vitria Technology, Inc. has caused this Certificate of Amendment to be signed by its Chief Executive Officer as of May 27, 2003.

VITRIA TECHNOLOGY, INC.

/s/ JoMei Chang  
JoMei Chang, Ph.D.  
Chief Executive Officer



**CERTIFICATE OF MERGER  
FOR THE MERGER OF  
ITG ACQUISITION, INC.  
WITH AND INTO  
VITRIA TECHNOLOGY, INC.**

Pursuant to Section 251(c) of the  
General Corporation Law of the State of Delaware

Vitria Technology, Inc., a Delaware corporation (the "Company"), does hereby certify to the following facts relating to the merger (the "Merger") of ITG Acquisition, Inc., a Delaware corporation ("Merger Sub"), with and into the Company, with the Company remaining as the surviving corporation of the Merger (the "Surviving Corporation"):

- FIRST: The Company and Merger Sub are the constituent corporations in the Merger, and each is a corporation incorporated pursuant to the laws of the State of Delaware.
- SECOND: An Agreement and Plan of Merger dated September 20, 2006 has been approved, adopted, certified, executed and acknowledged by the Company and by Merger Sub in accordance with the provisions of subsection (c) of Section 251 of the Delaware General Corporation Law.
- THIRD: The Surviving Corporation of the Merger shall be Vitria Technology, Inc.
- FOURTH: Upon the effectiveness of the Merger, the Certificate of Incorporation, as amended, of the Surviving Corporation shall be amended to read in its entirety as set forth in Attachment A attached hereto.
- FIFTH: The executed Agreement and Plan of Merger is on file at the principal place of business of the Surviving Corporation at 945 Stewart Drive, Sunnyvale, California 94085.
- SIXTH: A copy of the executed Agreement and Plan of Merger will be furnished by the Company, the Surviving Corporation, on request and without cost, to any stockholder of any constituent corporation of the Merger.
- SEVENTH: The Merger will become effective at 4:30 p.m. Eastern Standard Time on the date of filing this Certificate of Merger with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the Company has caused this Certificate of Merger to be executed by its duly authorized officer as of March 7, 2007.

VITRIA TECHNOLOGY, INC.

By: /s/ Michael D. Perry  
Name: Michael D. Perry  
Title: Senior Vice President and Chief  
Financial Officer

Attachment A

RESTATED CERTIFICATE OF INCORPORATION  
OF  
VITRIA TECHNOLOGY, INC.

ARTICLE I

The name of the corporation is Vitria Technology, Inc.

ARTICLE II

The address of the registered office of the corporation in the State of Delaware is 3500 South Dupont Highway, City of Dover, County of Kent, DE 19901. The name of its registered agent at that address is Incorporating Services, Ltd.

ARTICLE III

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

ARTICLE IV

The total number of shares of stock which the corporation has authority to issue is One Hundred (100) shares, all of which shall be Common Stock, \$0.001 par value per share.

ARTICLE V

The Board of Directors of the corporation shall have the power to adopt, amend or repeal Bylaws of the corporation.

ARTICLE VI

Election of directors need not be by written ballot unless the Bylaws of the corporation shall so provide.

ARTICLE VII

To the fullest extent permitted by law, no director of the corporation shall be personally liable for monetary damages for breach of fiduciary duty as a director. Without limiting the effect of the preceding sentence, if the Delaware General Corporation Law is hereafter amended to authorize the further elimination or limitation of the liability of a director, 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.

Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article VII, shall eliminate, reduce or otherwise

adversely affect any limitation on the personal liability of a director of the corporation existing at the time of such amendment, repeal or adoption of such an inconsistent provision.

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION

OF

VITRIA TECHNOLOGY, INC.

Vitria Technology, Inc., a Delaware corporation, hereby certifies that:

1. The name of the corporation is Vitria Technology, Inc. The original name of the corporation was Vitria Acquisition Corporation, and the date of filing its original Certificate of Incorporation with the Secretary of State was June 21, 1999.

2. This Amended and Restated Certificate of Incorporation of the corporation attached hereto as Exhibit "A", which is incorporated herein by this reference, and which restates, integrates and further amends the provisions of the Certificate of Incorporation of this corporation as heretofore amended or supplemented, has been duly adopted by the corporation's Board of Directors and a majority of the stockholders in accordance with Sections 242 and 245 of the Delaware General Corporation Law, with the approval of the corporation's stockholders having been given by written consent without a meeting in accordance with Section 228 of the Delaware General Corporation Law.

IN WITNESS WHEREOF, said corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its duly authorized officer this 25th day of January, 2008 and the foregoing facts stated herein are true and correct.

Vitria Technology, Inc.

By: /s/ JoMei Chang

JoMei Chang

Chief Executive Officer

TRADEMARK

REEL: 006150 FRAME: 0045

Exhibit A

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

Vitria Technology, Inc.

ARTICLE I

The name of this corporation is Vitria Technology, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 3500 South Dupont Highway, City of Dover, County of Kent, DE 19901. The name of its registered agent at such address is Incorporating Services, Ltd.

ARTICLE III

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

ARTICLE IV

(A) Classes of Stock. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 80,000,000 shares, each with a par value of \$0.001 per share. Seventy Million (70,000,000) shares shall be Common Stock and Ten Million (10,000,000) shares shall be Preferred Stock.

(B) Rights, Preferences and Restrictions of Preferred Stock. All of the Preferred Stock authorized by this Amended and Restated Certificate of Incorporation (the "Restated Certificate") shall be designated "Series A Preferred Stock" and shall consist of Ten Million (10,000,000) shares. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock are as set forth below in this Article IV(B). The Series A Preferred Stock is referred to as the "Preferred Stock".

1. Dividend Provisions. The holders of shares of Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at a compounded annual rate of 10% of the Adjusted Stated Value (as defined below) per annum on each outstanding share of Preferred Stock (the "Preferred Dividends"), compounding annually on the last day of each fiscal year of the Corporation. The "Adjusted Stated Value" shall mean an amount equal to the sum of \$12.50 per share (as adjusted for stock splits, stock dividends, reclassifications or the like) plus all Preferred Dividends accrued but

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unpaid as of the last day of the most recently completed fiscal year of the Corporation (as adjusted for stock splits, stock dividends, reclassifications or the like). The Preferred Dividends shall accrue on each share from the date of issuance of each such share of Preferred Stock, and shall accrue from day to day, whether or not earned or declared. The Preferred Dividends shall be cumulative so that, if such dividends in respect of any previous or current annual dividend period, at the annual rate specified above, shall not have been paid the deficiency shall first be fully paid before any dividend or other distribution shall be paid on or declared and set apart for the Common Stock. Other than the compounding noted above, any accumulation of the Preferred Dividends shall not bear interest. Preferred Dividends shall be paid (i) at the discretion of the Corporation's board of directors (the "Board of Directors"), or (ii) in the event of any Liquidation Transaction (as described in subsection 2(c)(i) below). Preferred Dividends that are payable shall be paid to the extent assets are legally available therefor and any amounts for which assets are not legally available shall be paid promptly as assets become legally available therefor; any partial payment will be made pro rata among the holders of such shares. After payment of such dividends, any additional dividends shall be distributed among the holders of Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock then held by each holder (assuming conversion of all such Preferred Stock into Common Stock).

## 2. Liquidation.

(a) Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of 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 Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the sum of \$12.50 (as adjusted for stock splits, stock dividends, reclassifications or the like) plus any accrued or declared but unpaid dividends thereon (including the Preferred Dividends) or (ii) the value such holder would receive if the applicable share of Preferred Stock held by such holder had been converted into Common Stock immediately prior to such liquidation, dissolution or winding up. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) Remaining Assets. Upon the completion of the distribution required by Section 2(a) above, if assets remain in the Corporation, the holders of the Common Stock of the Corporation shall receive all of the remaining assets of the Corporation pro rata based on the number of shares of Common Stock then held by each holder.

### (c) Certain Acquisitions.

(i) Deemed Liquidation. For purposes of this Section 2, a liquidation, dissolution, or winding up of the Corporation shall be deemed to occur if: (i) the

Corporation is acquired by means of a merger or other form of corporate reorganization in which outstanding shares of the Corporation are exchanged for securities or other consideration issued by the acquiring corporation or its subsidiary, as a result of which the holders of voting securities of the Corporation prior to such merger or reorganization shall hold less than 50% of the voting power of the acquiring corporation by virtue of their conversion or exchange of, or continuing to hold, their voting securities of the Corporation, (ii) the Corporation shall sell, convey or otherwise dispose of all or substantially all of its assets, or (iii) the Corporation or its stockholders effect a transaction or series of transactions in which more than 50% of the voting power of the Corporation is acquired by another person or entity (any such transaction, a "Liquidation Transaction"), provided that a merger effected exclusively for the purpose of changing the domicile of the Corporation shall not be considered a Liquidation Transaction.

(ii) Valuation of Consideration. In the event of a deemed liquidation as described in Section 2(c)(i) above, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability:

(1) If traded on a securities exchange, the value shall be based on the formula specified in the definitive agreements for the Liquidation Transaction or, if no such formula exists, then the value of such securities shall be based on a formula approved by the Board of Directors and derived from the closing prices of the securities on such exchange over a specified time period;

(2) If actively traded over-the-counter, the value shall be based on the formula specified in the definitive agreements for the Liquidation Transaction or, if no such formula exists, then the value of such securities shall be based on a formula approved by the Board of Directors and derived from the closing bid or sales prices (whichever is applicable) of such securities over a specified time period; and

(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 of Directors.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as specified above in Section 2(c)(ii)(A) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

### 3. Intentionally Omitted



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

(a) **Right to Convert.** Subject to Section 4(c), the shares of Preferred Stock shall be convertible, at the option of the holders of a majority of the outstanding Preferred Stock, at any time after the date of issuance of such share, at the office of the 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 \$2.075 (as adjusted for stock splits, stock dividends, reclassifications or the like involving the Preferred Stock) by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The holder or holders of the Preferred Stock shall not be entitled to convert less than all of the outstanding Preferred Stock. The initial Conversion Price per share of Preferred Stock shall be \$2.075. Such initial Conversion Price shall be subject to adjustment as set forth in Section 4(d).

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share upon the consummation of a firmly underwritten public offering of shares of the Corporation's Common Stock pursuant to a registration statement on Form S-1 under the Securities Act of 1933, as amended (the "Securities Act"), lead-managed by an underwriter of national standing, for listing on a nationally recognized exchange, at a public offering price of at least \$4.15 per share (as adjusted for stock splits, stock dividends, reclassification and the like) and yielding aggregate proceeds to the Corporation in excess of \$50,000,000 (net of underwriting discounts and commissions) (a "Qualified Public Offering"). Upon any conversion of the Preferred Stock all accrued and unpaid Preferred Dividends will be cancelled.

(c) **Mechanics of Conversion.** Before any holder of Preferred Stock shall be entitled to convert such Preferred Stock into shares of Common Stock, the holder shall surrender the certificate or certificates therefor, duly endorsed (or a reasonably acceptable affidavit and indemnity undertaking in the case of a lost, stolen or destroyed certificate), at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to 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 as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on (i) the date of such surrender of the shares of Preferred Stock to be converted or (ii) if applicable, the date of automatic conversion specified in Section 4(b) above, 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 public Common Stock as of such date. If the conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act the conversion may, at the option of any holder tendering such Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event any persons entitled to receive Common Stock upon conversion of such Preferred Stock

conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of the Preferred Stock shall be subject to adjustment from time to time as follows:

(i) Issuance of Additional Stock below Purchase Price. If the Corporation should issue, at any time after the date upon which any shares of Preferred Stock were first issued (the "Purchase Date" with respect to such series), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i).

(A) Price Adjustment. Whenever the Conversion Price is adjusted pursuant to this Section 4(d)(i), the Conversion Price shall be adjusted to a price equal to the purchase price per share for such Additional Stock.

(B) Definition of "Additional Stock". For purposes of this Section 4(d)(i), "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(D)) by the Corporation after the Purchase Date) other than

(1) Common Stock issued pursuant to stock dividends, stock splits or similar transactions, as described in Section 4(d)(i) hereof;

(2) Up to 6,000,000 shares of Common Stock issued or issuable to employees, officers, consultants or directors of the Corporation or other persons performing services for the Corporation pursuant to the Corporation's stock option plan;

(3) Common Stock or Preferred Stock issuable upon exercise of warrants, notes, or other convertible securities outstanding as of the date of this Restated Certificate;

(4) Common Stock issued upon conversion of the Preferred Stock; and

(5) Common Stock issued or issuable in a public offering prior to or in connection with which all outstanding shares of Preferred Stock will be converted to Common Stock.

(6) Capital stock, or warrants or options to purchase capital stock, issued in connection with bona fide acquisitions, mergers or other strategic transactions that are not primarily for the purpose of raising financing, the terms of which are approved by the Board of Directors.

(7) Capital stock, or options or warrants to purchase capital stock, issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings, commercial property lease transactions or similar transactions, in each case as approved by the Board of Directors.

(C) Determination of Consideration. In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(D) Deemed Issuances of Common Stock. In the case of the issuance (whether before, on or after the applicable Purchase Date) of securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (the "Common Stock Equivalents"), the following provisions shall apply for all purposes of this Section 4(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon conversion, exchange or exercise (assuming the satisfaction of any conditions to convertibility, exchangeability or exercisability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) of any Common Stock Equivalents and subsequent conversion, exchange or exercise thereof shall be deemed to have been issued at the time such securities were issued or such Common Stock Equivalents were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related Common Stock Equivalents (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion, exchange or exercise of any Common Stock Equivalents (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(C).

(2) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon conversion, exchange or exercise of any Common Stock Equivalents, other than a change resulting from the antidilution provisions thereof, the Conversion Price of the Preferred Stock, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the conversion, exchange or exercise of such Common Stock Equivalents.

(3) Upon the termination or expiration of the convertibility, exchangeability or exercisability of any Common Stock Equivalents, the Conversion Price of the Preferred Stock, to the extent in any way affected by or computed using

such Common Stock Equivalents, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and Common Stock Equivalents that remain convertible, exchangeable or exercisable) actually issued upon the conversion, exchange or exercise of such Common Stock Equivalents.

(4) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Section 4(d)(i)(D)(1) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(i)(D)(2) or 4(d)(i)(D)(3).

(E) No Increased Conversion Price. Notwithstanding any other provisions of this Section 4(d)(i), except to the limited extent provided for in Sections 4(d)(i)(D)(2) and 4(d)(i)(D)(3), no adjustment of the Conversion Price pursuant to this Section 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) Stock Splits and Dividends. In the event the Corporation should at any time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or Common Stock Equivalents without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(D).

(iii) Reverse Stock Splits. If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. In the event the Corporation shall declare a distribution (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2 of this Article IV(B)) payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(i) or 4(d)(ii), then, in each such case for the purpose of this Section 4(e), the holders of Preferred Stock 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 the Corporation into which their shares of Preferred Stock

Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2 of this Article IV(B)) provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded down to the nearest whole share. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion. If the conversion would result in any fractional share, the Corporation shall, in lieu of issuing any such fractional share, pay the holder thereof an amount in cash equal to the fair market value of such fractional share on the date of conversion, as determined in good faith by the Board of Directors.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price 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 prepare and furnish to each holder of such 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 (A) such adjustment and readjustment, (B) the Conversion Price for the Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of the Preferred Stock.

(h) Notices of Record Date. In the event of any taking by the 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 (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Preferred Stock, at least 10 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.

(i) 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 outstanding shares of such 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 of such series of Preferred Stock, in addition to such other remedies as shall be available to the holder of such 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 purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate.

(j) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

(k) Waiver of Adjustment of Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of the Preferred Stock may be waived by the written consent or vote of both (i) the holders of a majority of the outstanding Preferred Stock and (ii) Weston Presidio (for so long as Weston Presidio holds any shares of Preferred Stock), either before or after the issuance causing the adjustment, provided that no retroactive waiver shall be applicable after the conversion of any share of Preferred Stock into Common Stock hereunder.

## 5. Voting Rights.

(a) Except as expressly provided by this Restated Certificate or as provided by law, the holders of Preferred Stock shall have the same voting rights as the holders of Common Stock and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and the holders of Common Stock and the Preferred Stock shall vote together as a single class on all matters. Each holder of Common Stock shall be entitled to one vote for each share of Common Stock held, and each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could be converted. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Unless otherwise set forth herein, the number of directors which constitute the Board of Directors of the Corporation shall be designated in the Bylaws of the Corporation. Each director on the Board of Directors shall have one vote on all matters before

the Board of Directors; provided, however, if at any time there are fewer WP Directors (as defined in the Investor Rights Agreement) serving on the board than Weston Presidio is entitled to designate under the Investor Rights Agreement as from time to time in effect, the WP Director(s) then serving shall have, in the aggregate, that number of votes equal to the number of directors that Weston Presidio is then entitled to designate and all other directors shall continue to have only one vote on all matters before the Board of Directors.

6. Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. This Restated Certificate shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

7. Repurchase of Shares. If and to the extent the Corporation may from time to time be or become subject to certain provisions of the California Corporations Code pursuant to the operation of Section 2115 thereof, each holder of an outstanding share of Preferred Stock shall be deemed to have waived application of Sections 502 and 503 of the California Corporations Code to the repurchase by the Corporation of shares of Common Stock held by employees, officers, directors, consultants, independent contractors, advisors or other persons performing services for the Corporation or a subsidiary of the Corporation that are subject to restricted stock purchase agreements or stock option exercise agreements under which the Corporation has the option to repurchase such shares: (i) upon the occurrence of certain events, such as the termination of employment or services; or (ii) pursuant to the Corporation's exercise of rights of first refusal to repurchase such shares.

(C) Common Stock.

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared for such Common Stock from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, or the occurrence of a Liquidation Transaction, the assets of the Corporation shall be distributed as provided in Section 2 of Article IV(B).

3. Voting Rights. Each holder of Common Stock shall have the right to one vote per share of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law.

## ARTICLE V

The Board of Directors of the Corporation is expressly authorized to make, alter or repeal Bylaws of the Corporation.

## ARTICLE VI

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

## ARTICLE VII

(A) 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 breach of fiduciary duty as a director.

(B) The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

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

## ARTICLE VII

To the maximum extent permitted from time to time under the laws of the State of Delaware, this Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to its officers, directors or stockholders, other than those officers, directors or stockholders who are employees of this Corporation. No amendment or repeal of this Article VII shall apply to or have any effect on the liability or alleged liability of any officer, director or stockholder of the Corporation for or with respect to any opportunities of which such officer, director or stockholder becomes aware prior to such amendment or repeal.

\* \* \*



CERTIFICATE OF AMENDMENT

OF

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

VITRIA TECHNOLOGY, INC.

Vitria Technology, Inc., a Delaware corporation, does hereby certify that the following amendment to the corporation's Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Section 242 of the Delaware General Corporation Law, with the approval of such amendment by the corporation's stockholders having been given by written consent without a meeting in accordance with Sections 228(d) and 242 of the Delaware General Corporation Law:

Article IV(A) of the Amended and Restated Certificate of Incorporation, relating to the authorized shares of the corporation, is amended to read in its entirety as follows:

"Classes of Stock. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 83,000,000 shares, each with a par value of \$0.001 per share. Seventy Million (73,000,000) shares shall be Common Stock and Ten Million (10,000,000) shares shall be Preferred Stock."

IN WITNESS WHEREOF, said corporation has caused this Certificate of Amendment to be signed by its duly authorized officer this 28 day of August, 2014, and the foregoing facts stated herein are true and correct.

VITRIA TECHNOLOGY, INC.

By: JoMei Chang  
JoMei Chang, President

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