

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	CHANGE OF NAME		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
RichRelevance, Inc.		06/17/2008	CORPORATION: DELAWARE

RECEIVING PARTY DATA

Name:	Edvert, Inc.
Street Address:	1915 Bishop Rd.
City:	Belmont
State/Country:	CALIFORNIA
Postal Code:	94002
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 10

Property Type	Number	Word Mark
Serial Number:	77467749	PERSONALIZED MERCHANDISING
Serial Number:	77352726	RR RICHRELEVANCE
Serial Number:	77345817	RICHRELEVANCE
Serial Number:	77352340	{RR} RICHRELEVANCE
Serial Number:	77351742	RICHMAIL
Serial Number:	77351432	RICHREACH
Serial Number:	77351202	RICHRECS
Serial Number:	77351759	RADNET
Serial Number:	77364418	PERSONALIZED MERCHANDISING
Serial Number:	77223076	GET RICH

CORRESPONDENCE DATA

Fax Number: (949)851-9348
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.

Phone: (949) 757-7148

CH \$265.00 77467749

Email: ocipdocketing@mwe.com
Correspondent Name: Farah P. Bhatti, Esq.
Address Line 1: 18191 Von Karman Avenue, Suite 500
Address Line 2: McDermott Will & Emery LLP
Address Line 4: Irvine, CALIFORNIA 92612-7108

ATTORNEY DOCKET NUMBER:	079953-0011
NAME OF SUBMITTER:	Farah P. Bhatti, Esq.
Signature:	/FarahBhatti/
Date:	07/09/2008

Total Attachments: 17

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Delaware

PAGE 1

The First State

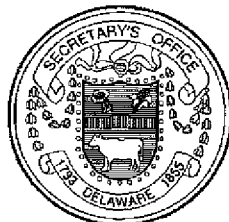
I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "EDVERT, INC.", FILED IN THIS OFFICE ON THE SEVENTEENTH DAY OF JUNE, A.D. 2008, AT 8:05 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.

4341920 8100

080702955

You may verify this certificate online
at corp.delaware.gov/authver.shtml



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6669617

DATE: 06-18-08

TRADEMARK
REEL: 003812 FRAME: 0924

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
EDVERT, INC.**

Edvert, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "*Corporation*") does hereby certify that:

1. The original Certificate of Incorporation of this Corporation was filed with the Secretary of State of Delaware on April 26, 2007.
2. The Amended and Restated Certificate of Incorporation in the form attached hereto as Exhibit A 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 directors and stockholders of the Corporation.
3. The Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and is hereby incorporated herein by this reference.

IN WITNESS WHEREOF, Edvert, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer on this 17th day of June, 2008.

EDVERT, INC.

/s/ David Selinger

David Selinger, Chief Executive Officer

EXHIBIT A

**CERTIFICATE OF INCORPORATION
OF
EDVERT, INC.**

ARTICLE 1. NAME

The name of the corporation is RichRelevance, Inc. (the "*Corporation*").

ARTICLE 2. ADDRESS

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

ARTICLE 3. PURPOSE

The purpose of the Corporation is to engage in any lawful acts or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware, as amended from time to time.

ARTICLE 4. AUTHORIZED CAPITAL

The Corporation is authorized to issue two classes of shares, designated "Common Stock" and "Preferred Stock" respectively. Upon the effective date of the filing of this Amended and Restated Certificate of Incorporation, each share of the Corporation's outstanding Common Stock and Preferred Stock shall be converted and reconstituted into two shares of the same class and series of capital stock from which such shares were converted (the "*Stock Split*"). All share amounts and amounts per share in this Amended and Restated Certificate of Incorporation have been appropriately adjusted to reflect the Stock Split. No further adjustment of any dividend rates, liquidation preferences, conversion prices, share amounts or amounts per share shall be made as a result of the Stock Split.

The total number of shares of Common Stock which the Corporation is authorized to issue is 42,000,000, with a par value of \$0.0001 per share, and the total number of shares of Preferred Stock which the Corporation is authorized to issue is 16,951,696, with a par value of \$0.0001 per share. 4,000,000 of the shares of Common Stock are designated "Class A Common Stock" (the "*Class A Common*"). 4,400,000 of the shares of Preferred Stock are designated "Series A Preferred Stock" (the "*Series A Preferred*"). 12,551,696 of the shares of Preferred Stock are designated "Series B Preferred Stock" (the "*Series B Preferred*"). References herein to "Preferred Stock" shall include the Series A Preferred and Series B Preferred unless expressly stated otherwise and references herein to "Common Stock" shall include the Class A Common unless expressly stated otherwise.

**ARTICLE 5. RIGHTS, PREFERENCES, PRIVILEGES
AND RESTRICTIONS OF CAPITAL STOCK**

The relative rights, preferences, privileges and restrictions granted to or imposed upon the respective classes of the shares of capital stock or the holders thereof are as follows:

1. *Dividend Preference.*

(a) The holders of Series A Preferred and Series B Preferred shall be entitled to receive, out of funds legally available therefor, dividends at an annual rate equal to (i) 8.0% of the "Original Series A Issue Price" (as defined below) (appropriately adjusted for stock splits, subdivisions, combinations, consolidations and the like with respect to such shares) for each outstanding share of Series A Preferred held by them and (ii) 8.0% of the "Original Series B Issue Price" (as defined below) (appropriately adjusted for stock splits, subdivisions, combinations, consolidations and the like with respect to such shares) for each outstanding share of Series B Preferred held by them, payable when and if declared by the Board of Directors, in preference and priority to the payment of dividends on any shares of Common Stock (other than those payable solely in Common Stock or involving the repurchase of shares of Common Stock from terminated directors, officers, employees, consultants or advisors of the Corporation or its subsidiaries pursuant to contractual arrangements or in connection with the Corporation's exercise of any right of first refusal). No dividends shall be declared on the Series A Preferred or the Series B Preferred unless dividends are declared on both such series of Preferred Stock. In the event dividends are paid to the holders of the Series A Preferred and Series B Preferred that are less than the full amounts to which such holders are entitled pursuant to this Section 1(a), such holders shall share ratably in the total amount of dividends paid according to the respective amounts due each such holder if such dividends were paid in full.

(b) The dividends payable to the holders of the Series A Preferred and Series B Preferred shall not be cumulative, and no right shall accrue to the holders of the Series A Preferred and Series B Preferred by reason of the fact that dividends are not declared on the Series A Preferred and Series B Preferred or paid in any previous fiscal year of the Corporation, whether or not the earnings of the Corporation in that previous fiscal year were sufficient to pay such dividends in whole or in part.

(c) After payment of dividends to the holders of Series A Preferred and Series B Preferred as set forth above, dividends may be declared and distributed on a pro rata basis, out of funds legally available therefor, among all holders of Common Stock and Preferred Stock (on an as-if-converted to Common Stock basis); provided, however, that (i) no dividend may be declared and distributed among holders of Common Stock at a rate greater than the rate at which dividends are paid to the holders of Series A Preferred and Series B Preferred based on the number of shares of Common Stock into which such shares of Series A Preferred and Series B Preferred are convertible on the date such dividend is declared, and (ii) no dividend may be declared and distributed among holders of Common Stock at a rate different than the rate at which dividends are paid to the holders of Class A Common based on the number of shares of Common Stock into which such shares of Class A Common are convertible on the date such dividend is declared.

(d) In the event that the Corporation shall have declared but unpaid dividends outstanding immediately prior to, and in the event of, a conversion of Preferred Stock (as provided in Section 4 of this Article 5), the Corporation shall, at the option of the Corporation, pay in cash to the holders of Preferred Stock subject to conversion the full amount of any such dividends or allow such dividends to be converted into Common Stock in accordance with, and pursuant to the terms specified in, Section 4 of this Article 5.

2. *Liquidation Preference.*

(a) Unless holders of a majority of the then outstanding Preferred Stock, voting together as a single class on an as-converted basis, agree otherwise, in the event of (i) any liquidation, dissolution or winding up of the Corporation, whether voluntary or not, (ii) the sale, lease, assignment, transfer, conveyance or disposal of all or substantially all of the assets of the Corporation or (iii) the acquisition of the Corporation by another entity by means of consolidation, corporate reorganizations, merger or other transaction or series of related transactions in which stockholders of the Corporation immediately prior to such transaction do not hold a majority of the voting power of the outstanding securities of the successor entity (each a "*Liquidation Event*"), distributions to the Corporation's stockholders shall be made in the following manner:

(i) Each holder of Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock, by reason of their ownership of such stock, the amount of (i) \$0.25 (appropriately adjusted for stock splits, subdivisions, combinations, consolidations and the like with respect to such shares) (the "*Original Series A Issue Price*") for each share of Series A Preferred then held by such holder, plus an amount equal to all declared but unpaid dividends on such shares of Series A Preferred (collectively, the "*Series A Preference*") and (ii) \$0.369 (appropriately adjusted for stock splits, subdivisions, combinations, consolidations and the like with respect to such shares) (the "*Original Series B Issue Price*") for each share of Series B Preferred then held by such holder, plus an amount equal to all declared but unpaid dividends on such shares of Series B Preferred (collectively, the "*Series B Preference*"). If, upon the occurrence of a Liquidation Event, the assets and funds available to be distributed among the holders of the Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amounts set forth in this Section 2(a)(i), then the entire assets and funds of the Corporation legally available for distribution to such holders shall be distributed ratably based on the total preferential amount due each such holder under this Section 2(a)(i).

(ii) After payment has been made to the holders of Preferred Stock of the full amounts to which they are entitled pursuant to Section 2(a)(i) above, the remaining assets of the Corporation available for distribution to stockholders shall be distributed ratably among the holders of Common Stock and Class A Common pro rata based upon the number of shares of Common Stock held by each (assuming conversion of all Class A Common into Common Stock).

(b) Each holder of Preferred Stock and Common Stock shall be deemed to have consented to distributions made by the Corporation in connection with the repurchase of

shares of Common Stock issued to or held by directors, officers, employees, consultants or advisors of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements (whether now existing or hereafter entered into) providing for the right of said repurchase between the Corporation and such persons or in connection with the Corporation's exercise of any right of first refusal.

(c) The value of securities and property paid or distributed pursuant to this Section 2 shall be computed at fair market value at the time of payment to the Corporation or at the time made available to stockholders, all as determined by the Board of Directors in the good faith exercise of its reasonable business judgment, provided that (i) if such securities are listed on any established stock exchange or a national market system, their fair market value shall be the closing sales price for such securities as quoted on such system or exchange (or the largest such exchange) for the date the value is to be determined (or if there are no sales for such date, then for the last preceding business day on which there were sales), as reported in the Wall Street Journal or similar publication, and (ii) if such securities are regularly quoted by a recognized securities dealer but selling prices are not reported, their fair market value shall be the mean between the high bid and low asked prices for such securities on the date the value is to be determined (or if there are no quoted prices for such date, then for the last preceding business day on which there were quoted prices).

(d) Nothing hereinabove set forth shall affect in any way the right of each holder of Preferred Stock and Class A Common to convert such shares at any time and from time to time into Common Stock in accordance with Section 4 of this Article 5.

3. *Voting Rights.*

(a) Except as otherwise required by law or hereunder, the holder of each share of Common Stock issued and outstanding shall have one vote and the holder of each share of Preferred Stock and Class A Common shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock or Class A Common, as applicable, could be converted at the record date for determination of the stockholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or the effective date of any written consent of stockholders, such votes to be counted together with all other shares of stock of the Corporation having general voting power and not separately as a class. Fractional votes by the holders of Preferred Stock and Class A Common shall not, however, be permitted and any fractional voting rights shall (after aggregating all shares into which shares of Preferred Stock and Class A Common held by each holder could be converted) be rounded to the nearest whole number (with one-half being rounded upward). Holders of Common Stock and Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Corporation's Bylaws.

(b) Notwithstanding the provisions of Section 3(a) above, at each annual or special meeting called for the purpose of electing directors, (i) so long as at least a majority of the originally issued shares of Series B Preferred remain issued and outstanding (subject to adjustment as provided in accordance with Section 4(d) below), the holders of Series B Preferred, voting as a separate class, shall be entitled to elect two members of the Board of

Directors, (ii) the holders of Common Stock, voting as a separate class, shall be entitled to elect two members of the Board of Directors, and (iii) the remaining members of the Board of Directors shall be elected by the holders of Preferred Stock and the holders of Common Stock, voting as separate classes on an as-if converted basis. The provisions of this Section 3(b) shall expire and be of no further force or effect upon conversion or redemption of all outstanding shares of Preferred Stock into Common Stock pursuant to the provisions of Section 4 of this Article 5. In the case of any vacancy in the office of a director elected by a specified group of stockholders, a successor shall be elected to hold office for the unexpired term of such director by the affirmative vote of the shares of such specified group given at a special meeting of such stockholders duly called or by an action by written consent for that purpose, provided that in the absence of such stockholder action, such vacancy shall be filled by a majority of the directors then in office, although less than a quorum or by a sole remaining director then in office. Any director who shall have been elected by a specified group of stockholders may be removed during the aforesaid term of office, either for or without cause, by, and only by, the affirmative vote of the holders of the shares of such specified group, given at a special meeting of such stockholders duly called or by an action by written consent for that purpose, and any such vacancy thereby created, may be filled by the vote of the holders of the shares of such specified group represented at such meeting or in such consent.

4. **Conversion Rights.** The holders of Preferred Stock and Class A Common shall have conversion rights as follows:

(a) **Rights to Convert.**

(i) **Series A Preferred Right to Convert into Common Stock.** Each share of Series A Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for such Series A Preferred into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing the Original Series A Issue Price by the then effective Conversion Price for such Series A Preferred, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of the Series A Preferred (the "**Series A Conversion Price**") shall initially be the Original Series A Issue Price. The initial Series A Conversion Price shall be subject to adjustment as provided in accordance with Section 4(d) below.

(ii) **Series B Preferred Right to Convert into Common Stock.** Each share of Series B Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for such Series B Preferred into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing the Original Series B Issue Price by the then effective Conversion Price for such Series B Preferred, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of the Series B Preferred (the "**Series B Conversion Price**") shall initially be the Original Series B Issue Price. The initial Series B Conversion Price shall be subject to adjustment as provided in accordance with Section 4(d) below.

(iii) **Class A Common Right to Convert into Common Stock.** Each share of Class A Common shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for such Class A Common into one fully-paid and non-assessable share of Common Stock (appropriately adjusted for stock splits, subdivisions, combinations, consolidations and the like with respect to such shares).

(iv) **Class A Common Right to Convert into Other Securities.** Each share of Class A Common that is not subject to a repurchase option in favor of the Corporation based upon continued service to the Corporation shall be convertible, at the option of the holder thereof, at any time on or within 30 days following a "Qualified Financing" (as defined below), at the office of the Corporation or any transfer agent for such Class A Common, into that number of fully-paid and non-assessable share of equity securities of the Corporation issued in the Qualified Financing ("**Conversion Shares**") determined by multiplying the number of shares to be converted by the applicable "Conversion Ratio" (as defined below). Such a conversion may only occur if a third party otherwise investing at least \$100,000 in the Qualified Financing purchases the Conversion Shares immediately upon the conversion thereof for the same price (payable to the holder thereof) and subject to the same terms, conditions and restrictions as other shares purchased by the participants in the Qualified Financing. For purposes of this paragraph, "**Qualified Financing**" means the closing in one or more tranches of a financing (other than a debt financing) undertaken by the Corporation after the filing of this Amended and Restated Certificate of Incorporation principally for capital raising purposes in which the aggregate amount of gross proceeds received by the Company totals at least \$500,000 in the aggregate. For purposes of this paragraph, "**Conversion Ratio**" means, for each Qualified Financing, the inverse of the ratio at which a share of equity securities issued in such Qualified Financing is convertible into Common Stock of the Corporation (i.e. one divided by such conversion ratio). By way of example only, in the event that one share of equity securities issued in a Qualified Financing is convertible into five shares of Common Stock, the Conversion Ratio shall be one-fifth. If upon a conversion of Class A Common pursuant to this paragraph a fraction of a share would result, the Corporation will pay in lieu thereof in cash the value of such fractional share based upon the purchase price of the Conversion Shares. The Corporation will provide notice to each holder of Class A Common prior to any Qualified Financing describing the proposed terms of the Qualified Financing and allowing reasonable opportunity for the holder to convert some or all of the holder's Class A Common as described herein

(b) **Automatic Conversion.** Each share of Preferred Stock and Class A Common shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Price upon the earliest of: (i) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, (the "**Securities Act**") covering the offer and sale of Common Stock for the account of the Corporation to the public with aggregate proceeds to the Corporation of at least \$20,000,000 (before deduction for underwriters commissions and expenses) and an offering price equal to at least five times the Original Series B Issue Price (ii) the affirmative vote or written consent of a majority of the then outstanding shares of Series A Preferred (with respect to a conversion of the Series A Preferred), Series B Preferred (with respect to a conversion of the

Series B Preferred) or Class A Common (with respect to a conversion of the Class A Common), and (iii) the conversion into Common Stock of a majority of the originally issued shares of Series A Preferred (with respect to a conversion of the Series A Preferred), Series B Preferred (with respect to a conversion of the Series B Preferred) or Class A Common (with respect to a conversion of the Class A Common) (each such event is an "*Automatic Conversion*"). In the event of an Automatic Conversion of the Series A Preferred, Series B Preferred and Class A Common upon a public offering as aforesaid, the person(s) entitled to receive the Common Stock issuable upon such conversion of such Series A Preferred, Series B Preferred and Class A Common shall not be deemed to have converted such Series A Preferred, Series B Preferred and Class A Common until immediately prior to the closing of such sale of securities.

(c) *Mechanics of Conversion.* No fractional shares of Common Stock or Conversion Shares shall be issued upon conversion of Preferred Stock or Class A Common. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair value of such fractional share, as determined in good faith by the Board of Directors. Before any holder of Preferred Stock or Class A Common shall be entitled to convert the same into full shares of Common Stock or Conversion Shares and to receive certificates therefor, or to have the purchaser thereof receive certificates therefor in the case of a conversion of Class A Common into Conversion Shares, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock or Class A Common and shall give written notice to the Corporation at such office that such holder elects to convert the same; provided, however, that in the event of an Automatic Conversion pursuant to Section 4(b) above, the outstanding shares of Preferred Stock and Class A Common shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion unless the certificates evidencing such shares of Preferred Stock and Class A Common are either delivered to the Corporation or its transfer agent, as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder, a certificate or certificates for the number of shares of Common Stock or Conversion Shares, as applicable, to which such holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock or Class A Common to be converted, or in the case of Automatic Conversion, on the date of closing of the offering, the date of the affirmative vote or written consent or the date of conversion of the Preferred Stock or Class A Common, as applicable, and the person or persons entitled to receive the shares of Common Stock or Conversion Shares, as applicable, issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares on such date.

(d) *Adjustments to Conversion Price.*

(i) *Adjustments for Stock Splits, Stock Dividends, Subdivisions, Combinations or Consolidations with Respect to Common Stock.* In the event the outstanding shares of Common Stock shall be increased by a stock dividend payable in Common Stock, stock split, subdivision or other similar transaction occurring after the filing of this Amended and Restated Certificate of Incorporation into a greater number of shares of Common Stock, the Conversion Prices for each series of Preferred Stock then in effect shall, concurrently with the effectiveness of such event, be decreased in proportion to the percentage increase in the outstanding number of shares of Common Stock. In the event the outstanding shares of Common Stock shall be decreased by a reverse stock split, combination, consolidation or other similar transaction occurring after the filing of this Amended and Restated Certificate of Incorporation into a lesser number of shares of Common Stock, the Conversion Prices for each series of Preferred Stock then in effect shall, concurrently with the effectiveness of such event, be increased in proportion to the percentage decrease in the outstanding number of shares of Common Stock.

(ii) *Adjustments for Other Distributions.* In the event the Corporation at any time or from time to time makes or fixes a record date for the determination of holders of Common Stock entitled to receive, any distribution payable in securities of the Corporation other than shares of Common Stock and other than as otherwise adjusted in this Section 4, then and in each such event provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof, the amount of securities of the Corporation which they would have received had their Preferred Stock been converted into Common Stock on the date of such event.

(iii) *Adjustments for Reclassification, Exchange and Substitution.* If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by reclassification, exchange, substitution or otherwise (other than a stock split, stock dividend, subdivision, combination or consolidation of shares, provided for above), the Conversion Prices for each series of Preferred Stock then in effect shall, concurrently with the effectiveness of such reclassification, exchange, substitution or other transaction, be proportionately adjusted such that the Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of such Preferred Stock immediately before that change.

(iv) *Adjustments on Issuance of Additional Stock.*

(1) *Adjustments to Conversion Price.* If the Corporation shall issue "Additional Stock" (as defined in Section 4(d)(iv)(2) below) for a consideration per share less than the Series A Conversion Price and/or the Series B Conversion Price in effect on the date and immediately prior to such issue, then and in such event, the Series A Conversion Price and/or the Series B Conversion Price, as applicable, shall be reduced concurrently with such issue, to a price (calculated to three decimal places) determined by multiplying such Conversion Price by a

fraction (A) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Stock so issued (or deemed to be issued) would purchase at such Conversion Price; and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Additional Stock so issued; provided that for purposes of this Section 4(d)(iv)(1), all shares of Common Stock issuable upon exercise of outstanding stock options, all shares of Common Stock reserved for issuance under the Corporation's stock option and/or stock issuance plan(s) then in place, all shares of Common Stock issuable upon conversion of outstanding Series A Preferred, and all shares of Common Stock issuable upon exercise or conversion of any other outstanding security or debt instrument of the Corporation shall be deemed to be Common Stock outstanding.

(2) **Definition of Additional Stock.** For purposes of this Section 4(d)(iv), "**Additional Stock**" shall mean all Common Stock issued or deemed to be issued pursuant to Section 4(d)(iv)(3) below by the Corporation after the date on which the first share of Series B Preferred was issued (the "**Series B Original Issue Date**") other than (a) as described in subsections (i), (ii) and (iii) of this Section 4(d); (b) as a dividend or distribution with respect to the Preferred Stock; (c) to directors, officers, employees, consultants and advisors of the Corporation (including, without limitation, options issued pursuant to the Corporation's stock option and/or stock issuance plan(s) in effect from time to time) as designated and approved by the Board of Directors; (d) pursuant to the acquisition by the Corporation of another corporation or entity by consolidation, corporate reorganizations, merger or purchase of all or substantially all of the assets of such corporation or entity as approved by the Board of Directors; (e) in connection with equipment leasing, real estate leasing, bank financing or similar transactions approved by the Board of Directors; (f) to vendors or customers as approved by the Board of Directors; (g) upon conversion of Preferred Stock; (h) in a public offering pursuant to an effective registration statement under the Securities Act; (i) in connection with strategic alliances, joint ventures or other corporate partnerships, research and development agreements, product development or marketing agreements or other similar agreements approved by the Board of Directors; or (j) on terms approved by the holders of a majority of the then outstanding shares of Preferred Stock, voting together as a single class on an as-converted basis.

(3) **Deemed Issuance of Common Stock.**

(A) If the Corporation (i) grants any rights or options to subscribe for, purchase, or otherwise acquire shares of Common Stock or (ii) issues or sells any security convertible into, or exchangeable for, shares of Common Stock, then, in each case, such granting, issue or sale shall be considered to be an issue or sale for cash of the maximum number of shares of Common Stock issuable on exercise, conversion or exchange at the price per share determined under this Section 4(d)(iv)(3), and the Series A Conversion Price and/or the Series B Conversion Price shall be subject to adjustment as provided in this Section 4(d)(iv)(3) to reflect (on the basis of that determination) the issue or sale. No further adjustment of such Conversion Prices shall be made as a result of the actual issuance of shares of Common Stock on the exercise of any such rights or options or the conversion or exchange of any such convertible securities. The price per share of Common Stock issuable on the exercise of such rights or options or the

conversion or exchange of the securities shall be determined by dividing the total amount, if any, received or receivable by the Corporation as consideration for the granting of the rights or options or the issue or sale of the convertible or exchangeable securities, plus the minimum aggregate amount of additional consideration payable to the Corporation on exercise or conversion of the securities, by the maximum number of shares of Common Stock issuable on the exercise, conversion or exchange.

(B) Upon the redemption or repurchase of any such securities or the expiration or termination of the right to convert into, exchange for, or exercise with respect to, Common Stock, the Series A Conversion Price and/or the Series B Conversion Price shall be readjusted to such price as would have been obtained had the adjustment made upon their issuance been made upon the basis of the issuance of only the number of such securities as were actually converted into, exchanged for or exercised with respect to, Common Stock. If the purchase price, conversion rate or exchange rate provided for in any such security changes at any time, then, upon such change becoming effective, the Series A Conversion Price and/or the Series B Conversion Price then in effect shall be readjusted forthwith to such price as would have been obtained had the adjustment made upon the issuance of such securities been made upon the basis of (i) the issuance of only the number of shares of Common Stock theretofore actually delivered upon the conversion, exchange or exercise of such securities, and the total consideration received therefor, and (ii) the granting or issuance, at the time of such change, of any such securities then still outstanding for the consideration, if any, received by the Corporation therefor and to be received on the basis of such changed price or rate.

(4) ***Determination of Consideration.*** For the purpose of making any adjustment in the Conversion Price as provided above, the consideration received by the Corporation for any issue or sale of Common Stock shall be computed:

(A) to the extent it consists of cash, as the amount of cash received by the Corporation before deduction of any offering expenses payable by the Corporation and any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale;

(B) to the extent it consists of property other than cash, at the fair market value of that property as determined in good faith by the Board of Directors, provided that (i) if such property includes securities that are listed on any established stock exchange or a national market system, their fair market value shall be the closing sales price for such securities as quoted on such system or exchange (or the largest such exchange) for the date the value is to be determined (or if there are no sales for such date, then for the last preceding business day on which there were sales), as reported in the Wall Street Journal or similar publication, and (ii) if such property includes securities that are regularly quoted by a recognized securities dealer but selling prices are not reported, their fair market value shall be the mean between the high bid and low asked prices for such securities on the date the value is to be determined (or if there are no quoted prices for such date, then for the last preceding business day on which there were quoted prices); and

(C) if Common Stock is issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, 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 Common Stock.

(e) **No Impairment.** Except as provided in Section 6 of this Article 5, the Corporation shall not, by amendment of its Certificate of Incorporation or through any voluntary liquidation, dissolution, winding up, transfer of assets, consolidation, corporate reorganization, merger or issue or sale of securities, or through any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but shall at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock and Class A Common against impairment

(f) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of the Conversion Price of any series of Preferred Stock pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of 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 of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Conversion Price for such series of Preferred Stock at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such series of Preferred Stock.

(g) **Issue Taxes.** The Corporation shall pay any and all issue and other taxes (other than income taxes) that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of Preferred Stock or Class A Common pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(h) **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 and Class A Common 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 Preferred Stock and Class A Common; 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 Preferred Stock and Class A Common, the Corporation shall 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, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to its Certificate of Incorporation.

(i) **Status of Converted Shares.** In the event that any shares of any Preferred Stock shall be converted pursuant to this Section 4, the shares so converted shall resume the status of authorized but unissued shares of Preferred Stock undesignated as to series. In the event that any shares of any Class A Common shall be converted pursuant to this Section 4, the shares so converted shall resume the status of authorized but unissued shares of Common Stock undesignated as to class or series.

5. **Redemption Rights.** The Preferred Stock shall not be redeemable.

6. **Covenants.**

(a) **Series A Preferred.** In addition to any other rights provided by law, so long as at least a majority of the originally issued Series A Preferred remains issued and outstanding (subject to adjustment as provided in accordance with Section 4(d)), the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of a majority of the then outstanding shares of Series A Preferred, voting as a separate class:

(i) authorize or issue shares of any class or series of stock having any preference or priority as to dividends or redemption rights, liquidation preferences, conversion rights or voting rights, superior to any preference or priority of the Series A Preferred;

(ii) reclassify any shares of capital stock of the Corporation into shares having any preference or priority as to dividends or redemption rights, liquidation preferences, conversion rights or voting rights, superior to any preference or priority of the Series A Preferred;

(iii) increase or decrease the authorized number of shares of Series A Preferred;

(iv) amend or repeal any provision of, or add any provision to, its Certificate of Incorporation if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Series A Preferred; or

(v) sell, lease, assign, transfer, convey or otherwise dispose of or cause to be disposed the securities of any subsidiary (other than to the Corporation).

(b) **Series B Preferred.** In addition to any other rights provided by law, so long as at least a majority of the originally issued Series B Preferred remains issued and outstanding (subject to adjustment as provided in accordance with Section 4(d)), the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of a majority of the then outstanding shares of Series B Preferred, voting as a separate class:

(i) alter or change the rights, preferences or privileges of the Series B Preferred;

(ii) increase or decrease the authorized number of shares of Preferred Stock or Common Stock;

(iii) authorize or issue, or reclassify any shares of capital stock of the Corporation into, shares of any class or series of stock having any preference or priority as to dividends or redemption rights, liquidation preferences, conversion rights or voting rights, superior to or on a parity with any preference or priority of the Series B Preferred;

(iv) apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any shares of Common Stock, except for repurchases from directors, officers, employees, consultants, advisors of, and persons performing services for, the Corporation or its subsidiaries on terms approved by the Board of Directors upon termination of employment or association;

(v) engage in any transaction or series of related transactions constituting a Liquidation Event;

(vi) amend or repeal any provision of, or add any provision to, its Certificate of Incorporation or Bylaws if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the holders of Series B Preferred;

(vii) increase or decrease the authorized number of members of the Company's Board of Directors;

(viii) declare or pay dividends on or make any distributions with respect to Common Stock or Preferred Stock; or

(ix) issue any debt in the aggregate of more than \$150,000, other than with the approval of the Board, including the Series B Director.

(c) **Class A Common.** In addition to any other rights provided by law, so long as at least a majority of the originally issued Class A Common remains issued and outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of a majority of the then outstanding shares of Class A Common, voting as a separate class, amend or repeal any provision of, or add any provision to, its Certificate of Incorporation if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Class A Common.

7. ***Residual Rights.***

All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the Common Stock. The Common Stock shall not be redeemable.

ARTICLE 6. BOARD OF DIRECTORS

In furtherance and not in limitation of the powers conferred by Delaware law:

1. **Bylaws.** The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.
2. **Election of Directors.** The election of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE 7. DISSOLUTION

Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

ARTICLE 8. LIMITATION OF DIRECTORS' LIABILITY

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[, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware or (iv) for any transaction from which the director derived any improper personal benefit.] If the General Corporation Law of the State of Delaware is amended hereafter to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended.

Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE 9. RESERVATION OF RIGHTS

The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon a stockholder herein are granted subject to this reservation.