

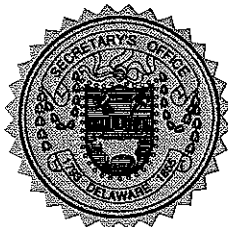
# Delaware

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 "AICENT, INC.", FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF APRIL, A.D. 2005, AT 5:16 O'CLOCK P.M.

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



3287349 8100

050345259

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3846093

DATE: 04-29-05

**THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
AICENT, INC.**

Aicent, Inc., a corporation organized and existing under the General Corporation Laws of the State of Delaware, hereby certifies that:

**ONE:** The original name of the Corporation is Aicent, Inc. and the date of filing the original Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware (the "Secretary of State") is September 13, 2000. Such original Certificate of Incorporation has been amended and restated by the filing of an Amended and Restated Certificate of Incorporation, filed with the Secretary of State on October 12, 2000, and a Second Amended and Restated Certificate of Incorporation, filed on August 23, 2002, as amended by a Certificate of Amendment thereto, filed with the Secretary of State on August 15, 2003 (collectively, the "Second Amended and Restated Certificate of Incorporation of the Corporation")

**TWO:** The Second Amended and Restated Certificate of Incorporation of the Corporation, as amended, is hereby amended and restated to read as follows:

**I.**

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

**II.**

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

2711 Centerville Road, Suite 400  
Wilmington, DE 19808  
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 that the Corporation is authorized to issue is Eighty Six Million Eight Hundred Forty Nine Thousand Five Hundred and Ninety (86,849,590) shares of capital stock, divided into Fifty-Three Million (53,000,000) shares of Common Stock at a par value of \$.001 per share ("Common Stock") and

Thirty Three Million Eight Hundred Forty Nine Thousand Five Hundred and Ninety (33,849,590) shares of Preferred Stock (the "Preferred Stock"), at a par value of \$ .001.

**B.** The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of capital stock of the Corporation (voting together on an as-if-converted basis), regardless of whether the Corporation has also received the affirmative vote of the holders of a majority of the outstanding shares of Common Stock.

**C.** Five Million Seven Hundred Forty Nine Thousand Five Hundred and Ninety (5,749,590) of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "Series A Stock"). Ten Million Six Hundred Thousand (10,600,000) of the authorized shares of Preferred Stock are hereby designated "Series B Preferred Stock" (the "Series B Stock"). Seventeen Million Five Hundred Thousand (17,500,000) of the authorized shares of Preferred Stock are hereby designated "Series C Preferred Stock (the "Series C Stock").

**D.** The rights, preferences, privileges, restrictions and other matters relating to the Preferred Stock are as follows:

**1. Dividend Rights.**

**(a)** The Preferred Stock, in preference to the holders of the Common Stock, will be entitled to receive, when and as declared by the Board of Directors, but only out of funds legally available therefor, cash dividends at the rate of \$0.04 per annum on each outstanding share of Series A Stock or Series B Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations, and the like with respect to such shares) and \$0.064 per annum on each outstanding share of Series C Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations, and the like with respect to such shares).

**(b)** Such dividends will be payable only when and as declared by the Board of Directors and will be non-cumulative. In the event that dividends are paid on any share of Common Stock, an additional dividend will be paid with respect to all outstanding shares of Preferred Stock in an amount equal per share (on an as-converted basis) to the amount paid or set aside for each share of Common Stock.

**(c) Priority of Dividends.** No dividends shall be paid to the holders of shares of Series A Stock or Series B Stock during any fiscal year until dividends in the amount set forth in Section D(1)(a) above have been paid to the holders of Series C Stock during that fiscal year and no dividends shall be paid on any shares of Common Stock during any fiscal year until dividends in the amount set forth in Section D(1)(a) above have been paid to the holders of shares of Series A Stock and Series B Stock during that fiscal year. Further, no dividends shall be paid with respect to outstanding shares of Common Stock unless a dividend (in addition to the amounts set forth in Section (D)(1)(a) above) is paid with respect to all outstanding shares of Preferred Stock in an amount for each such share of Preferred Stock (on an as converted basis) equal to or greater than the per share dividend paid on such shares of Common Stock.

(d) In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights to purchase any such securities or evidences of indebtedness, then, in each such case the holders of the Preferred Stock shall be entitled to a proportionate share of any such distribution as though the holders of the Preferred Stock were the holders of the number of shares of Common Stock of the Corporation into which their respective shares of Preferred 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.

## 2. Voting Rights.

(a) **General Rights.** Except as otherwise provided herein or as required by law, the Preferred Stock will be voted equally with the shares of the Common Stock of the Corporation and not as a separate class, at any annual or special meeting of stockholders of the Corporation, 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 Preferred Stock will be entitled to such number of votes as will be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Preferred Stock are convertible (pursuant to Section 5 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

### (b) Board of Directors.

(i) The Board of Directors shall consist of seven (7) members. The holders of Series A and B Stock, voting together as a class, shall be entitled to elect two (2) members of the Board of Directors. The holders of Series C Stock shall be entitled to elect two (2) members of the Board of Directors (each, a "Series C Director"). The holders of the Preferred Stock and the holders of the Common Stock, voting together as a single class, shall be entitled to designate three (3) members of the Board of Directors.

(ii) In the case of any vacancy in the office of a director occurring among the directors elected by the holders of the Series A and B Stock or among the directors elected by the holders of Series C Stock pursuant to the second and third sentences of subsection (b)(i) above, the remaining director or directors so elected by the holders of the Series A and B Stock or Series C Stock, as the case may be, may, by affirmative vote of a majority thereof (or the remaining director so elected if there is but one, or if there is no such director remaining, by the affirmative vote of the holders of a majority of the shares of Series A and B Stock or Series C Stock, as the case may be) elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of the Series A and B Stock or Series C Stock or any director so elected as provided in the preceding sentence hereof, may be removed during the aforesaid term of office, whether with or without cause, only by the affirmative vote of the holders of a majority of the Series A and B Stock or Series C Stock, as the case may be.

(c) **Series A Stock Special Voting Rights.** Without the affirmative vote or written consent of the holders (acting together as a class) of at least a majority of the then outstanding shares of Series A Stock, the Corporation will not, whether directly or indirectly by amendment, merger, consolidation or otherwise:

(i) adversely alter or change the rights, preferences or privileges of the shares of Series A Stock; or

(ii) authorize, create or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, have a preference or privilege with respect to liquidation, dividend or redemption senior to or on parity with the Series C Stock, unless such security is sold at an Effective Price greater than the then-applicable Conversion Price (as such terms are defined in Section 5 below) for the Series C Stock.

(d) **Series B Stock Special Voting Rights.** Without the affirmative vote or written consent of the holders (acting together as a class) of at least a majority of the then outstanding shares of Series B Stock, the Corporation will not, whether directly or indirectly by amendment, merger, consolidation or otherwise:

(i) adversely alter or change the rights, preferences or privileges of the shares of Series B Stock; or

(ii) authorize, create or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, have a preference or privilege with respect to liquidation, dividend or redemption senior to or on parity with the Series C Stock, unless such security is sold at an Effective Price greater than the then-applicable Conversion Price (as such terms are defined in Section 5 below) for the Series C Stock.

(e) **Series C Stock Special Voting Rights.** Without the affirmative vote or written consent of the holders (acting together as a class) of at least a majority of the then outstanding shares of Series C Stock, the Corporation will not, whether directly or indirectly by amendment, merger, consolidation or otherwise:

(i) declare any dividend or make any distribution with respect to any security of the Corporation;

(ii) redeem, purchase, or otherwise acquire any debt of the Corporation or any share or shares of Preferred Stock or Common Stock; provided however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants, or other persons performing services for the Corporation or any subsidiary at a price per share of no more than such person's original cost per share (as adjusted for stock splits, dividends, combinations or the like) pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment or service, or pursuant to a right of first refusal;

(iii) alter or change the rights, preferences or privileges of the shares of Series C Stock;

(iv) authorize, create or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, have a preference or privilege with respect to liquidation, dividend or redemption senior to or on parity with the Series C Stock;

(v) amend this Third Amended and Restated Certificate of Incorporation or the Corporation's bylaws in any manner that is adverse to the holders of Series C Stock;

(vi) effect any sale, lease, assignment, transfer, or other conveyance of all or substantially all of the assets of the Corporation or any of its subsidiaries, or any consolidation or merger involving the Corporation or any of its subsidiaries, or any reclassification or other change of any stock, or any liquidation, dissolution or recapitalization of the Corporation, or effect any transaction or series of related transactions in which more than 50% of the voting power of the Corporation is transferred or disposed of;

(vii) increase the number of shares reserved for issuance pursuant to the Company's 2000 Stock Option Plan or adopt any other stock option in excess of 6.5 million shares (as adjusted for stock splits, dividends, combinations and the like) or equity plan;

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

(ix) directly or indirectly (including through a subsidiary) acquire any business or entity, including all or substantially all the assets of any business or entity, whether through a merger or consolidation, share purchase or asset purchase or any other means; or

(x) increase or decrease the authorized number of directors constituting the Corporation's Board of Directors.

**(f) Preferred Stock Special Voting Rights.** Without the affirmative vote or written consent of the holders (acting together as a class) of at least a majority of the then outstanding shares of Preferred Stock, the Corporation will not, whether directly or indirectly by amendment, merger, consolidation or otherwise:

(i) declare any dividend or make any distribution with respect to any security of the Corporation;

(ii) redeem, purchase, or otherwise acquire any debt of the Corporation or any share or shares of Preferred Stock or Common Stock; provided however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants, or other persons performing services for the Corporation or any subsidiary at a price per share of no more than such person's original cost per share (as adjusted

for stock splits, dividends, combinations or the like) pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment or service, or pursuant to a right of first refusal;

(iii) effect any sale, lease, assignment, transfer, or other conveyance of all or substantially all of the assets of the Corporation or any of its subsidiaries, or any consolidation or merger involving the Corporation or any of its subsidiaries, or any reclassification or other change of any stock, or any liquidation, dissolution or recapitalization of the Corporation, or effect any transaction or series of related transactions in which more than 50% of the voting power of the Corporation is transferred or disposed of;

(iv) increase the number of shares reserved for issuance pursuant to the Company's 2000 Stock Option Plan or adopt any other stock option in excess of 6.5 million shares (as adjusted for stock splits, dividends, combinations and the like) or equity plan;

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

(vi) increase or decrease the authorized number of directors constituting the Corporation's Board of Directors.

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

(a) Upon any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, before any distribution or payment will be made to the holders of Common Stock, each holder of shares of Preferred Stock will be entitled to be paid out of the assets of the Corporation the greater of (and in addition to any other payment such holder will be entitled to either as a holder of any other securities of the Corporation or otherwise): (A) the sum of (i) for each outstanding share of Series A Stock and Series B Stock then held by such holder an amount equal to \$0.50 and for each outstanding share of Series C Stock then held by such holder an amount equal to \$0.80 (in each case as adjusted for any stock splits, dividends, combination and the like), (ii) all declared and unpaid dividends on such shares of Preferred Stock, and (iii) an amount out of the assets available for distribution to the Corporation's stockholders remaining after payment of the amounts in (i) and (ii) above equal to such holder's pro rata portion of such remaining amount based on the number of shares of Common Stock into which such holder's Preferred Stock is then convertible until such holder has received an aggregate under this clause (A) of \$2.00 per share of Series A Stock and Series B Stock held by such holder and an aggregate under this clause (A) of \$3.20 per share of Series C Stock held by such holder, and (B) the amount such holder would be entitled to if such holder's shares of Preferred Stock and any declared but unpaid dividends thereon had been converted into shares of Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation (the greater of (A) and (B) is referred to herein as the "Liquidation Preference"). Thereafter, all of the remaining assets of the Corporation available to distribution to stockholders will be distributed ratably among the holders of Common Stock in proportion to the number of

shares of Common Stock owned by each such holder. If, upon any such liquidation, distribution, or winding up, the assets of the Corporation as set forth above will be insufficient to make payment in full to each holder of Preferred Stock of an amount equal to the sum of the amounts set forth in (A)(i) and (A)(ii) above with respect to all shares of Preferred Stock then held by such holder, such assets will be distributed among the holders of Preferred Stock at the time outstanding, with the holders of shares of Series C Stock being allocated seventy-five percent (75%) of such assets pro rata amongst themselves in proportion to the full amounts to which such holders would otherwise be entitled to receive under clauses (A)(i) and (A)(ii) above with respect to their shares of Series C Stock, and with the holders of shares of Series A Stock and Series B Stock being allocated twenty-five percent (25%) of such assets pro rata amongst themselves in proportion to the full amounts to which such holders would otherwise be entitled to receive under clauses (A)(i) and (A)(ii) above with respect to their shares of Series A Stock and Series B Stock.

(b) The following events will be considered a liquidation under this Section:

(i) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Corporation immediately prior to such consolidation, merger or reorganization, own 50% or less of the surviving corporation's (or its parent's, as applicable) voting power immediately after such consolidation, merger or reorganization; or any transaction or series of related transactions to which the Corporation is a party in which shares of stock representing fifty percent (50%) or more of the Corporation's voting power is transferred, excluding any consolidation or merger effected exclusively to change the domicile of the Corporation; or

(ii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation.

4. **Redemption.** The Preferred Stock is not redeemable

5. **Conversion Rights.**

(a) **Optional Conversion.** Each share of Preferred Stock is convertible, at any time or from time to time at the option of the holder thereof, into fully paid and nonassessable shares of Common Stock as provided herein.

(b) **Preferred Stock Conversion Price.** Each share of Preferred Stock is convertible into the number of shares of Common Stock that results from dividing the conversion price of the Preferred Stock that is in effect at the time of conversion (the applicable "Conversion Price") into the Original Issue Price for the Preferred Stock. The initial Conversion Price of the Series A Stock is \$0.50. The Original Issue Price for the Series A Stock is \$0.50. The initial Conversion Price of the Series B Stock is \$0.50. The Original Issue Price for the Series B Stock is \$0.50. The initial Conversion Price of the Series C Stock is \$0.80. The Original Issue Price for the Series C Stock is \$0.80. The Conversion Prices for the Series A



Stock, the Series B Stock, and the Series C Stock are subject to adjustment from time to time as provided below.

**(c) Mechanics of Conversion.** To exercise the conversion privilege, a holder of Preferred Stock will surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Preferred Stock, and will give written notice to the Corporation at such office that such holder elects to convert the same. As promptly as practicable on or after the conversion date, the Corporation will issue and mail or deliver to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled. Such conversion will be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion will be treated for all purposes as the record holder of such shares of Common Stock on such date.

**(d) Adjustment for Stock Splits and Combinations.** If the Corporation will at any time or from time to time after the date that the first share of Series C Stock is first issued (the "Original Issue Date") effect a subdivision of the outstanding Common Stock, the Conversion Price for that Series in effect immediately before that subdivision will be proportionately decreased. Conversely, if the Corporation will 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, the Conversion Price for that Series in effect immediately before the combination will be proportionately increased. Any adjustment under this Section 5(d) will become effective at the close of business on the date the subdivision or combination becomes effective.

**(e) Adjustment for Common Stock Dividends and Distributions.** If the Corporation at any time or from time to time after the Original Issue Date for a Series declares or pays, 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 Price for that Series that is then in effect will be decreased as of the time of such declaration or payment or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Conversion Price for that Series then in effect by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price for such Series will be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price for such Series will be adjusted pursuant to this Section 5(e) to reflect the actual payment of such dividend or distribution.

**(f) 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 the Preferred Stock 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 a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 5), in any such event each holder of Preferred Stock will 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 Preferred Stock 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.

**(g) 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 a recapitalization, subdivision, combination, reclassification, exchange, or substitution of shares provided for elsewhere in this Section 5), as a part of such capital reorganization, provision will be made so that the holders of the Preferred Stock will thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of the Corporation 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 will be made in the application of the provisions of this Section 5 with respect to the rights of the holders of Preferred Stock after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the Conversion Price then in effect and the number of shares issuable upon conversion of the Preferred Stock) will be applicable after that event and be as nearly equivalent as practicable.

**(h) Sale of Shares Below Conversion Price.**

(i) If at any time or from time to time after the Original Issue Date, the Corporation issues or sells, or is deemed by the express provisions of this subsection (h) to have issued or sold, Additional Shares of Common Stock (as defined in subsection (h)(iv) below), other than as a dividend or other distribution on any class of stock as provided in Section 5(e) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 5(d) above, for an Effective Price (as defined in subsection (h)(iv) below) less than the then effective Conversion Price for a series of Preferred Stock, the then existing Conversion Price for such series of Preferred Stock will be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Conversion Price for that series of Preferred Stock by a fraction (i) the numerator of which will 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 subsection (h)(ii)) by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price, and (ii) the denominator of which will 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 will 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 Preferred

Stock 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 outstanding on the day immediately preceding the given date.

(ii) For the purpose of making any adjustment required under this Section 5(h)(i), the consideration received by the Corporation for any issue or sale of securities will (A) to the extent it consists of cash, be computed at the net amount of cash received by the Corporation after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale but without deduction of any other expenses payable by the Corporation, (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 (including both Series C Directors), and (C) if Additional Shares of Common Stock, Convertible Securities (as defined in subsection (h)(iii)) 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 Corporation 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 (including both Series C Directors) to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of the adjustment required under Section 5(h)(i), if the Corporation issues or sells (i) stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") or (ii) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the Conversion Price of a Series, in each case the Corporation will 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 Corporation 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 Corporation 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 Corporation (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 Corporation will 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 Corporation 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 will 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 Corporation upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price will be again recalculated using the increased minimum amount of consideration payable to the

Corporation upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Conversion Price of a Series, as adjusted upon the issuance of such rights, options or Convertible Securities, will 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 will expire without having been exercised, the Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities will be readjusted to the Conversion Price 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 Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation 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 Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, *provided* that such readjustment will not apply to prior conversions of such Series of Preferred Stock

(iv) "Additional Shares of Common Stock" will mean all shares of Common Stock issued by the Corporation or deemed to be issued pursuant to this Section 5(h), other than (A) shares of Common Stock issued upon conversion of the Preferred Stock; (B) shares of Common Stock and/or options to purchase Common Stock issued to employees, officers or directors of, or consultants or advisors to the Corporation or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board of Directors including both Series C Directors or pursuant to the Corporation's 2000 Stock Option Plan; (C) shares of Common Stock issued pursuant to the exercise of options, warrants, convertible securities or other rights outstanding as of the Original Issue Date, (D) shares of Common Stock and/or options, warrants, other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights issued for consideration other than cash in connection with a bona fide business acquisition by the Corporation pursuant to a merger, consolidation, acquisition or similar business combination approved by the Board of Directors, and (E) shares of Common Stock issued pursuant to any equipment leasing arrangement or debt financing from a bank or similar financial institution in a transaction approved by the Board of Directors and the primary purpose of which is not the raising of equity financing. References to Common Stock in the subsections of this clause (iv) above will mean all shares of Common Stock issued by the Corporation or deemed to be issued pursuant to this Section 5(h). The "Effective Price" of Additional Shares of Common Stock will 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 Corporation under this Section 5(h), into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this Section 5(h), for such Additional Shares of Common Stock.

(i) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Conversion Price for a series of Preferred Stock for the number of shares of Common Stock or other securities issuable upon conversion of such series of Preferred Stock, if

the Preferred Stock is then convertible pursuant to this Section 5, the Corporation, at its expense, will compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and will mail such certificate, by first class mail, postage prepaid, to each registered holder of Preferred Stock at the holder's address as shown in the Corporation's books. The certificate will set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Corporation for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Preferred Stock.

**(j) 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 will mail to each holder of Preferred Stock, at least ten (10) days prior to the record date specified therein (or such shorter period approved by the holders of a majority of the outstanding Preferred Stock, determined on an as converted basis) a notice specifying (i) 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, and (ii) the amount and character of such dividend, distribution, or right.

**(k) Automatic Conversion.**

(i) Each share of Preferred Stock will automatically be converted into shares of Common Stock (A) at any time upon the affirmative election of the holders of at least a majority of the outstanding shares of the Preferred Stock determined on an as converted basis and the affirmative election of the holders of at least a majority of the outstanding shares of Series C Stock, 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 Corporation in which the per share price to public is at least five dollars (\$5.00) (as adjusted for stock splits, dividends, recapitalizations and the like) and the gross cash proceeds to the Corporation (before underwriting discounts, commissions and fees) are at least thirty million dollars (\$30,000,000), and in which the Common Stock is listed on the New York Stock Exchange, an internationally recognized stock exchange approved by holders of a majority of the outstanding Series C Stock or on the Nasdaq National Market.

(ii) Upon the occurrence of either of the events specified in Section 5(k)(i) above, the outstanding shares of Preferred Stock will be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided, however,* that the Corporation will not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided below, 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. Upon the occurrence of such automatic conversion of the Preferred Stock, the holders of Preferred Stock will surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Preferred Stock. Thereupon, there will be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends will be paid in accordance with the provisions of Section 5(c).

**(l) Fractional Shares.** No fractional shares of Common Stock will be issued upon conversion of Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Preferred Stock by a holder thereof will 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 will, 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.

**(m) Reservation of Stock Issuable Upon Conversion.** The Corporation will 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 will from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock will not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as will be sufficient for such purpose.

**(n) Notices.** Any notice required by the provisions of this Section 5 will be in writing and will 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 (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices will be addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

**(o) Payment of Taxes.** The Corporation 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 Preferred Stock, 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 Preferred Stock so converted were registered.

**6. Common Stock**

(a) 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 will be entitled to receive, when, as and if declared by the Board of Directors, out of any assets of the corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. Upon the liquidation, dissolution or winding up of the corporation, the assets of the corporation will be distributed as provided in Article IV, Section 3 hereof.

(c) Voting Rights. The holder of each share of Common Stock will have the right to one vote, and will be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and will be entitled to vote upon such matters and in such manner as may be provided by law.

**V.**

**A.** A director of the Corporation shall, to the full extent permitted by the Delaware General Corporation Law as it now exists or as it may hereafter be amended, not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Neither any amendment nor repeal of this Article V(A), nor the adoption of any provision of this Third Amended and Restated Certificate of Incorporation inconsistent with this Article V(A), shall eliminate or reduce the effect of this Article V(A) with respect to any matter occurring, or any cause of action, suit or claim that, but for this Article V(A), would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

**B.** This corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California General Corporations Law ("CGCL") for breach of duty to the corporation and its stockholders 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 Preferred Stock 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 will only be prospective and will 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:

**E.** The management of the business and the conduct of the affairs of the Corporation will be vested in its Board of Directors.

**F.** Subject to the indemnification provisions in the Bylaws and subject to the rights of holders of Series A Stock, Series B Stock, Series C Stock and Preferred Stock as described in Sections 2(c), 2(d), 2(e) and 2(f), 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 Bylaw 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 will vary or conflict with any amendment or supplement thus adopted by the stockholders.

**G.** The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide. The directors shall be elected in accordance with Section D(2)(b) of Article III of this Third Amended and Restated Certificate of Incorporation.

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

**FOUR:** This Third Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware by the Board of Directors and the stockholders of the Corporation. This Third Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of the Corporation in accordance with Section 228 of the General Corporation Law of the State of Delaware.



**IN WITNESS WHEREOF, Aicent, Inc.** has caused this Third Amended and Restated Certificate of Incorporation to be signed by its President and the Secretary in Palo Alto, California this 28<sup>th</sup> day of April, 2005.

**Aicent, Inc.**

By: /s/Lynn Liu  
Lynn Liu, President

By: /s/Barry A. Carr  
Barry A. Carr, Secretary