

09-06-2000

FORM PTO-1594 (Rev. 6-93) OMB No. 0651-0011 (exp. 4/94)

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FEET U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): Servicesoft Corporation

- Individual(s), Association, General Partnership, Limited Partnership, Corporation-State: Delaware, Other

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment, Security Agreement, Other, Merger, Change of Name

Execution Date: February 10, 2000

2. Name and address of receiving party(ies)

Name: Servicesoft Technologies, Inc.

Internal Address:

Street Address: Two Apple Hill Drive

City: Natick State: MA ZIP: 01760

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State Delaware, Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designations must be a separate document from assignment)

Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,890,460; 2,186,944; 2,241,450

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Thomas V. Smurzynski

Internal Address: Lahive & Cockfield, LLP

Street Address: 28 State Street

City: Boston State: MA ZIP: 02109

6. Total number of applications and registrations involved:

3

7. Total fee (37 CFR 3.41).....\$ 90.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

12-0080

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Thomas V. Smurzynski Name of Person Signing

Signature

July 27, 2000 Date

Total number of pages including cover sheet, attachments, and document:

21

Mail documents to be recorded with required cover sheet information to: Commissioner of Patents and Trademarks, Box Assignments Washington, D.C. 20231

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TRADEMARK REEL: 002131 FRAME: 0823

Office of the Secretary of State

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "SERVICESOFT CORPORATION", CHANGING ITS NAME FROM "SERVICESOFT CORPORATION" TO "SERVICESOFT TECHNOLOGIES, INC.", FILED IN THIS OFFICE ON THE TENTH DAY OF FEBRUARY, A.D. 1999, AT 3:30 O'CLOCK P.M.



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A handwritten signature in cursive script, reading "Edward J. Freel".

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Edward J. Freel, Secretary of State

AUTHENTICATION: 0563160

DATE: 07-17-00

TRADEMARK  
REEL: 002131 FRAME: 0824

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 03:30 PM 02/10/1999  
991053118 - 2128116



**SEVENTH RESTATED CERTIFICATE OF INCORPORATION OF  
SERVICESOFT CORPORATION**

The original Certificate of Incorporation was filed with the Secretary of State on June 3, 1987 in the name of Rosh Intelligent Systems, Inc. Restated Certificates of Incorporation were filed with the Secretary of State on October 2, 1989, May 23, 1990, December 14, 1992 (which was amended on October 26, 1993 to change the corporation's name to ServiceSoft Corporation), February 2, 1994, June 23, 1995, and February 9, 1998. A Certificate of Amendment to the most recent Restated Certificate of Incorporation was filed with the Secretary of State on February 13, 1998. This Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of Delaware by the requisite written consent of the stockholders of the corporation in accordance with Section 228 of the General Corporation Law of Delaware and written notice thereof has been given as provided by said Section.

**ARTICLE I  
NAME**

The name of the corporation is: ServiceSoft Technologies, Inc. (the "corporation").

**ARTICLE II  
PURPOSES**

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 Delaware other than the banking business, the trust company business or the practices of a profession.

**ARTICLE III  
AGENT FOR SERVICE**

The name and address in the State of Delaware of this corporation's current agent for the service of process (which can be changed from time to time) is:

The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
City of Wilmington  
County of New Castle  
Delaware

**ARTICLE IV**  
**CORPORATE OFFICE**

The current address of the principal corporate office of the corporation (which can change from time to time) is:

50 Cabot Street, 2nd Floor  
Needham, MA 02194

**ARTICLE V**  
**CAPITAL STOCK**

The total number of shares of all classes of stock which the corporation has authority to issue is 21,000,002 (all with a par value of \$0.01 per share), consisting of:

13,000,000 shares of Common Stock,  
8,000,000 shares of Series H Convertible Preferred Stock,  
1 share of Series X Special Preferred Voting Stock, and  
1 share of Series Y Special Preferred Voting Stock.

**A. Common Stock**

Section 1. Voting Rights. Except as otherwise provided by law or this Seventh Restated Certificate of Incorporation, the holders of shares of Common Stock shall be entitled to one vote for each share so held with respect to all matters voted on by the stockholders of the corporation.

Section 2. Liquidation Rights. Subject to the prior and superior right of the Series H Convertible Preferred Stock (the "Preferred Stock") which is described below at Section B.2, upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the corporation (as that concept is defined in section B.2 below), the holders of Common Stock shall be entitled to participate ratably on a per share basis with the Preferred Stock (on an as-converted basis) in receiving the remaining funds, if any after satisfaction of creditor claims, available for distribution to stockholders.

Section 3. Dividends. Subject to provisions of law and of this Seventh Restated Certificate of Incorporation, the holders of Common Stock shall be entitled to receive dividends out of funds legally available therefor at such times and in such amounts as the Board of Directors may determine in its sole discretion.

**B. Preferred Stock**

Section 1. Designation and Voting Rights.

(a) There shall be three series of Preferred Stock:

"Series H Convertible Preferred Stock," constituting 8,000,000 shares and one share each of the two series of Special Preferred Voting Stock referred to in Section C below.

All other series of the corporation's preferred stock have been cancelled by appropriate action of the corporation's Board of Directors and stockholders. The outstanding shares of such preferred stock have been reissued as Preferred H Stock according to a formula agreed by the requisite number of holders thereof.

(b) Each share of Preferred Stock shall entitle the holder thereof to such number of votes per share on each such action as shall equal the number of shares of Common Stock (including fractions of a share) into which each share of Preferred Stock is then convertible.

**Section 2. Liquidation Preference.**

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of the corporation, the holders of Series H Preferred (including, by virtue of a Support Agreement dated February, 1999 [the "Support Agreement"] between the corporation and ServiceSoft Canada Inc. ["ServiceSoft Canada"], all holders of shares of ServiceSoft Canada convertible or exchangeable for Series H Preferred) shall be entitled to collectively receive a preference amount of \$19,203,186 (the "Preference Amount"). The full amount of the aggregate Preference Amount to be paid to all of ServiceSoft Canada holders of Series H Preferred (including all holders of shares of ServiceSoft Canada convertible or exchangeable for Series H Preferred) under this Section 2 shall be paid or set apart for payment before the payment of setting apart for payment of any amount for, or the distribution of any assets or surplus funds of the corporation to, the holders of Common Stock or any other stock of the corporation ranking on liquidation junior to the Series H Preferred in connection with such liquidation, dissolution or winding-up. If the assets or surplus funds to be distributed to the holders of Series H Preferred (including the holders of shares of ServiceSoft Canada convertible or exchangeable for Series H Preferred) are insufficient to permit the payment to such holders of their full Preference Amount, the assets and surplus funds legally available for distribution shall be distributed ratably among such holders in proportion to the full Preference Amount each such holder would otherwise be entitled to receive. The procedure for allocating the Preference Amount among the parties entitled to it shall be set forth in a Shareholders' Agreement of approximately the date of filing of this Certificate among the corporation and the holders of Preferred Stock ("Shareholders' Agreement").

(b) After the payment or setting apart for payment to the holders of Series H Preferred of the full aggregate Preference Amount so payable to them under subparagraph (a), the holders of

Common Stock or any other stock of the corporation ranking on liquidation junior to the Series H Preferred shall be entitled to receive all further payments or distributions until the amounts paid or distributed to all such holders equals the amount per share equal to the total aggregate Preference Amount divided by the total number of Series H Preferred (including the number of shares of ServiceSoft Canada convertible or exchangeable for Series H Preferred).

(c) After the payment or setting apart for payment to the holders of Common Stock or any other stock of the corporation ranking on liquidation junior to the Series H Preferred so payable to them under subparagraph (b), the holders of Common Stock or any other stock of the corporation ranking on liquidation junior to the Series H Preferred shall be entitled to participate ratably on a per share basis with the Series H Preferred (on an as-converted basis) in receiving all remaining assets or surplus funds of the corporation.

(d) For purposes of this Section B.2, a liquidation shall be deemed to be occasioned by, or to include, the corporation's sale of all or substantially all of its assets or the acquisition of the corporation by another entity by way of merger or consolidation or any other corporate reorganization, in which the stockholders of the corporation immediately prior to such consolidation, merger, or reorganization, own less than 50% of the corporation's 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 in excess of 50% of the corporation's voting power is transferred (excluding any merger effected exclusively for purposes of changing the domicile of the corporation); provided, however, that any of the foregoing transactions specified above in this paragraph (d) in which the consideration received by the corporation or its stockholders does not consist exclusively of cash and/or publicly traded securities and pursuant to which the holders of Series H Preferred are provided with a substantially similar liquidation preference as is provided in this Section B.2 shall be deemed not to represent a liquidation for purposes of this Section B.2.

**Section 3. Dividends.**

(a) Holders of Preferred Stock, in preference to the holders of any other stock of the Company ("Junior Stock"), shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of six percent (6%) of the Original Issue Price (as hereinafter defined) per annum on each outstanding share of Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The Original Issue Price of the Preferred Stock shall be \$2.53 per share. Such dividends shall

be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

(b) So long as any shares of Preferred Stock shall be outstanding, no dividend, whether in cash or in property shall be paid or declared, nor shall any other distribution be made, on any Junior Stock, nor shall any shares of any Junior Stock of the Company be purchased, redeemed, or otherwise acquired for value by the corporation (except for acquisitions of Common Stock by the corporation pursuant to agreements which permit the corporation to repurchase shares upon termination of services to the corporation or in exercise of the corporation's right of first refusal upon a proposed transfer pursuant to the Shareholders' Agreement) until all dividends (set forth in Section 3(a) above) on the Preferred Stock shall have been paid or declared and set apart and all redemptions then due and payable (set forth in Section B.5 of Article V) shall have been paid in full or set apart for payment in full. In the event dividends are paid on any share of Common Stock, an additional dividend shall be paid with respect to all outstanding shares of the Preferred Stock in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock. The provisions of this Section 3(b) shall not, however, apply to (i) a dividend payable in Common Stock with respect to which an appropriate adjustment to the Conversion Rate applicable to the Preferred Stock is made pursuant to Section 4(F), (ii) the acquisition of shares of any Junior Stock in exchange for shares of any other Junior Stock, or (iii) any repurchase of any outstanding securities of the Company that is approved by a majority of the Company's Board of Directors.

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

(a) **General.** Subject to and in compliance with the provisions of this Section 4, any shares of the Preferred Stock may, at the option of the holder, be converted at any time or from time to time into fully-paid and non-assessable shares (calculated as to each conversion to the largest whole share) of Common Stock. The number of shares of Common Stock to which a holder of Preferred Stock shall be entitled upon conversion shall be the product obtained by multiplying the Applicable Conversion Rate (determined as provided in Section 4(d)) by the number of shares of Preferred Stock being converted.

(b) **Mechanics of Conversion.** Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the corporation at such office that he elects to convert the same and shall state therein his name or

the name or names of his nominees in which he wishes the certificate or certificates for shares of Common Stock to be issued. The corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to his nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid, and a certificate or certificates for such number of shares of Preferred Stock as were represented by the certificates surrendered and not converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock from and after the close of business on such date.

(c) Automatic Conversion. All shares of Preferred Stock not theretofore converted shall automatically be converted into Common Stock in accordance with the provisions of this Section 4 upon the earlier of (i) the affirmative vote of holders of at least two-thirds of the shares of Preferred Stock then outstanding and (ii) concurrently with the effectiveness of the first firm commitment, underwritten public offering of the corporation's Common Stock of not less than \$10 million.

(d) Applicable Conversion Rate. The conversion rate in effect at any time for the Preferred Stock (the "Applicable Conversion Rate") shall be the quotient obtained by dividing \$2.53 by the Applicable Conversion Value, calculated as provided in Section 4(e).

(e) Applicable Conversion Value. The Applicable Conversion Value in effect for the Preferred Stock shall be \$2.53; except as adjusted from time to time in accordance with Section 4(f) hereof.

(f) Adjustments to the Applicable Conversion Value for Diluting Issuance of Securities.

(i) Special Definitions. For purposes of this Section 4(f), the following definitions shall apply:

(1) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(2) [intentionally omitted]

(3) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock and the Preferred Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock.



(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 4(f)(iii), deemed to be issued) by the corporation after filing date of this Certificate ("Filing Date"), but shall not include:

(A) shares of Common Stock issued or issuable upon conversion of shares of the Preferred Stock;

(B) shares of Common Stock issued to officers or employees of, or consultants to, the corporation pursuant to the corporation's Stock Option Plans approved by the Board of Directors; or

(C) shares of Preferred Stock issued in the context of a pending Combination Agreement with Balisoft Technologies Inc.

(ii) No Adjustment of Applicable Conversion Rate or Applicable Conversion Value. No adjustment in the Applicable Conversion Rate or Applicable Conversion Value shall be made in respect of the issuance of Additional Shares of Common Stock or otherwise, unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the corporation is less than the Applicable Conversion Value in effect immediately prior to the time that such Additional Shares of Common Stock are issued or deemed to be issued.

(iii) Issue of Securities Deemed Issue of Additional Shares of Common Stock

(1) Options and Convertible Securities. In the event the corporation at any time or from time to time after the Filing Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of any such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section 4(f)(v) hereof) of such Additional

Shares of Common Stock would be less than the Applicable Conversion Value in effect on the date immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustment in the Applicable Conversion Value shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the corporation, or decrease or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Applicable Conversion Value computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

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

(I) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the corporation upon such exercise, or for the issue of all such Convertible Securities

which were actually converted or exchanged, plus the additional consideration, if any, actually received by the corporation upon such conversion or exchange, and

(II) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the corporation (determined pursuant to Section 4(f)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) no readjustment pursuant to clause (B) or (C) above shall have the effect of increasing the Applicable Conversion Value to an amount which exceeds the lower of (i) the Applicable Conversion Value on the original adjustment date, or (ii) the Applicable Conversion Value that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date;

(E) in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Applicable Conversion Value shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in clause (C) above; and

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

(2) Stock Dividends, Stock Distribution and Subdivisions. In the event the corporation at any time or from time to time after the Filing Date shall declare or pay, without consideration, any

dividend on the Common Stock payable in Common Stock or make any other distribution on the Common Stock payable in Common Stock, or effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock) or in the event the outstanding shares of Common Stock shall be combined or consolidated by reclassification or otherwise into a lesser number of shares, or any right to acquire Common Stock for no consideration, then and in any such event, Additional Shares of Common Stock shall be deemed to have been issued:

(A) in the case of such dividend or distribution, immediately after the close of business on the record date of the determination of holders of any class of securities entitled to receive such dividend or distribution, or

(B) in the case of any subdivision, at the close of business on the date immediately prior to the date upon which such corporate action becomes effective.

If such record date shall have been fixed and such dividend shall not have been fully paid on the date fixed therefor, the adjustment previously made in the Applicable Conversion Value which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Applicable Conversion Value shall be adjusted pursuant to this Section 4(f)(iii) as of the time of actual payment of such dividend.

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

In the event that the corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(f)(iii)(1), but excluding Additional Shares of Common Stock issued pursuant to Section 4(f)(iii)(2), which event is dealt with in Section 4(f)(vi) hereof) without consideration or for consideration per share less than the Applicable Conversion Value in effect on the date of and immediately prior to such issue, then and in such event, such Applicable Conversion Value shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Applicable Conversion Value by a fraction (X) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue (including

shares of Common Stock issuable upon conversion of any outstanding Preferred Stock or Convertible Securities), plus (2) the number of shares of Common Stock which the aggregate consideration received by the corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Applicable Conversion Value, and (Y) the denominator which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue (including shares of Common Stock issuable upon conversion of any outstanding Preferred Stock or Convertible Securities), plus (2) the number of such Additional Shares of Common Stock so issued, provided that the Applicable Conversion Value shall not be so reduced at such time if the amount of such reduction would be an amount less than \$0.01, but any such amount shall be carried forward and reduction with respect thereto made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$0.01 or more.

Upon any adjustment of the Applicable Conversion Value pursuant to this Section 4(f)(iv), the Applicable Conversion Rate shall be correspondingly adjusted.

(v) Determination of Consideration. For purposes of this Section 4(f), the consideration received by the corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property: Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4(F)(iii)(1), relating to options and convertible

Securities, shall be determined by dividing

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

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

(vi) Adjustment for Dividends, Distributions, Subdivisions, Combinations or Consolidation of Common Stock.

(1) Stock Dividends, Distribution or Subdivisions. In the event the corporation shall issue Additional Shares of Common Stock pursuant to Section 4(f)(iii)(2) in a stock dividend, stock distribution or subdivision, the Applicable Conversion Value in effect immediately prior to such stock dividend, stock distribution or subdivision shall, concurrently with the effectiveness of such stock dividend, stock distribution or subdivision, be proportionately decreased and the Applicable Conversion Rate correspondingly adjusted.

(2) Combinations or Consolidation. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise pursuant to Section 4(f)(iii)(2) above, into a lesser number of shares of Common Stock, the Applicable Conversion Value in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased and the Applicable Conversion Rate correspondingly adjusted.

(vii) Adjustment for Merger or Reorganization, etc. In the case of any capital reorganization (other

than as a recapitalization, subdivision, combination, classification, exchange or substitution of shares provided elsewhere in this Section B.4), each share of Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the corporation deliverable upon conversion of such Preferred Stock would have been entitled upon such capital reorganization; and, in any case, appropriate adjustment (as determined by the Board of Directors) shall be made in the application of the provisions herein set forth with respect to the rights and interest thereafter of the holders of the Preferred Stock, to the end that the provisions set forth herein (including provisions with respect to changes in and other adjustments of the Applicable Conversion Rate and Applicable Conversion Value) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Preferred Stock.

(g) No Impairment. Without the consent of the holders of a majority of the then outstanding Preferred Stock, the corporation shall not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of terms to be observed or performed hereunder by the corporation but will 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 against impairment.

(h) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Applicable Conversion Value and Applicable Conversion Rate 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 upon request a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based.

(i) Common Stock Reserved. The corporation shall reserve and keep available out of its authorized but unissued Common Stock such number of shares of Common Stock as shall from time to time be sufficient to effect conversion of the Preferred Stock.

Section 5. Redemption. To the extent permitted by the General Corporation Law of Delaware and presuming the Company

previously has not been liquidated as defined in Section B.2 above, the Preferred Stock shall be redeemable as follows:

(a) On each of the fifth anniversary of the Acquisition Date (as defined below), the sixth anniversary of the Acquisition Date, and the seventh anniversary of the Acquisition Date (each a "Redemption Date"), the corporation shall, upon the affirmative vote of a majority of shares held by Preferred Stockholders as specified in subparagraph (d) below, at the option of a holder of Preferred Stock, such option to be effected by delivering a Redemption Notice (as defined below) to the corporation at least sixty (60) days prior to such Redemption Date, redeem: (i) on the fifth anniversary of the Acquisition Date, 33.3% of the shares of the Preferred Stock held by such stockholder on that date, (ii) on the sixth anniversary of the Acquisition Date, 66.6% of the shares of the Preferred Stock held by such stockholders on the fifth anniversary of the Acquisition Date (less shares previously redeemed by such stockholder or its predecessors-in-interest), and (iii) on the seventh anniversary of the Acquisition Date, 100% of the shares of Preferred Stock held by such stockholders on the fifth anniversary of the Acquisition Date (less shares previously redeemed by such stockholders or their predecessors-in-interest). The date of filing of this Seventh Restated Certificate of Incorporation is referred to in each instance as the "Acquisition Date."

(b) The Preferred Stock to be redeemed on any Redemption Date shall be redeemed by paying for each share in cash an amount equal to the same amount per share as would be payable if there were to be a liquidation event under Section B.2 above, plus ten percent (10%) per annum "redemption value," compounded on each anniversary of the Acquisition Date or the date of redemption in the final year, plus declared and unpaid dividends with respect to such shares ("Redemption Price"). Such notice shall state the number of shares of Preferred Stock to be redeemed.

(c) Shares subject to redemption pursuant to this Section shall be redeemed from each holder of the Preferred Stock on a pro rata basis.

(d) On or about one hundred five (105) days prior to each Redemption Date, the Company shall conduct a vote of the holders of the Preferred Stock with regard to whether to effectuate the redemption provision as of the then forthcoming Redemption Date. Should a majority of the then outstanding shares of the Preferred Stock approve that redemption no less than seventy five (75) days prior to each Redemption Date the Company shall send a notice (a "Redemption Notice") to all holders of Preferred Stock to be redeemed, setting forth (i) the Redemption Price for the



shares to be redeemed; and (ii) the place at which such holders may obtain payment of the Redemption Price upon surrender of their share certificates. If the Company does not have sufficient funds legally available to redeem all shares to be redeemed at the Redemption Date, then it shall redeem such shares pro rata (based on the portion of the aggregate Redemption Price payable to them) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(e) From and after such Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Company is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as holder of Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares; provided that in the event that shares of Preferred Stock are not redeemed due to a default in payment by the Company or because the Company does not have sufficient legally available funds or otherwise pursuant to subparagraph (g) below, such shares of Preferred Stock shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

(f) On or promptly after the date of redemption as specified in said notice, the holder shall surrender his certificate for the number of shares to be redeemed as stated in the notice. If less than all of the shares represented by such certificates are redeemed, a new certificate shall forthwith be issued for the unredeemed shares. Until the date of redemption specified in the notice, the holders of such Preferred Stock shall continue to have the right to convert the same pursuant to the provisions of Section 4 hereof.

(g) Should Delaware law or some other valid legal reason prevent the Corporation from redeeming shares on the date otherwise required by operation of the foregoing procedures, the Corporation shall effectuate the redemption as soon thereafter as it legally can do so.

#### C. Special Preferred Voting Stock.

Section 1. Series X Special Preferred Voting Stock. A Series of Preferred Stock, consisting of one share of such stock, is hereby designated as "Series X Special Preferred Voting Stock". The record holder of the Series X Special Preferred Voting Stock shall not be entitled to receive any dividends or other distributions or to receive or participate in any distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the corporation. Except as otherwise required by applicable law, at each annual or

special meeting of stockholders of the corporation the record holder of the Series X Special Preferred Voting Stock shall be entitled to vote on all matters submitted to a vote of the holders of the Common Stock, voting together with the holders of the Common Stock as a single class (except as otherwise provided herein or by applicable law), and the record holder of the Series X Special Preferred Voting Stock shall be entitled to cast on any such matter a number of votes equal to the number of Series C Exchangeable Shares (the "Exchangeable Common Shares") of ServiceSoft Canada Inc. and its successors at law, whether by merger, amalgamation or otherwise, outstanding as of the record date for such annual or special meeting of stockholders, which are not owned by the corporation or any subsidiary of the corporation. At such time as no Exchangeable Common Shares (other than Exchangeable Common Shares owned by the corporation or any subsidiary of the corporation) shall be outstanding and there are no shares of stock, debt, options or other agreements which could give rise to the issuance of any Exchangeable Common Shares to any person (other than the corporation or any subsidiary of the corporation), the share of Series X Special Preferred Voting Stock shall automatically be redeemed for \$1.00, and upon any such redemption or other purchase or acquisition of the Series X Special Preferred Voting Stock by the corporation the share of Series X Special Preferred Voting Stock shall be deemed retired and cancelled and may not be reissued.

Section 2. Series Y Special Preferred Voting Stock. A Series of Preferred Stock, consisting of one share of such stock, is hereby designated as "Series Y Special Preferred Voting Stock". The record holder of the Series Y Special Preferred Voting Stock shall not be entitled to receive any dividends or other distributions or to receive or participate in any distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the corporation. Except as otherwise required by applicable law, at each annual or special meeting of stockholders of the corporation the record holder of the Series Y special Preferred Voting Stock shall be entitled to vote on all matters submitted to a vote of the holders of the Series H Convertible Preferred Stock, voting together with the holders of the Series H Convertible Preferred Stock as a single class (except as otherwise provided herein or by applicable law), and the record holder of the Series Y Special Preferred Voting Stock shall be entitled to cast on any such matter a number of votes equal to the number of Series D Exchangeable Shares (the "Exchangeable Preferred Shares") of ServiceSoft Canada Inc. and its successors at law, whether by merger, amalgamation or otherwise, outstanding as of the record date for such annual or special meeting of stockholders, which are not owned by the corporation or any subsidiary of the corporation. At such time as no Exchangeable Preferred Shares (other than Exchangeable Preferred Shares owned by the corporation or any subsidiary of the corporation) shall be outstanding and there are no shares of stock, debt, options or other agreements which could give rise to the issuance of any

Exchangeable Preferred Shares to any person (other than the corporation or any subsidiary of the corporation), the share of Series Y Special Preferred Voting Stock shall automatically be redeemed for \$1.00, and upon any such redemption or other purchase or acquisition of the Series Y Special Preferred Voting Stock by the corporation the share of Series Y Special Preferred Voting Stock shall be deemed retired and cancelled and may not be reissued.

ARTICLE VI  
RIGHT OF FIRST REFUSAL

(a) If at any time any holder of the corporation's Common Stock or Preferred Stock desires to sell all or any part of his shares (the "Shares"), such stockholder (the "Offeror") shall submit a written offer (the "Offer") to the corporation to sell them (the "Offered Shares"). The Offer shall state in reasonable detail the proposed sale or transfer including, without limitation, the number of Shares to be sold or transferred, the nature of such sale or transfer, the consideration to be paid, and the name and address of each prospective purchaser or transferee (the "Proposed Transferee").

(b) Such Offer shall be at least as favorable terms to the corporation as those on which the Offeror proposes to sell the Offered Shares to the Proposed Transferee. The Offer shall disclose the identity of the Proposed Transferee, the Offered Shares proposed to be sold, the total number of Shares owned by the Offeror, the terms and conditions, including price, of the proposed sale and any other material facts relating to the proposed sale. The Offer shall further state that the corporation may acquire all (but not less than all) of the Offered Shares for the price and upon the other terms and conditions, including deferred payment (if applicable), set forth therein.

(c) The corporation shall communicate in writing its election to either purchase all (but not less than all) or none of the Offered Shares to the Offeror, which communication shall be delivered in person or mailed to the Offeror at the address provided by the Offeror within seven (7) days of the date the Offer is made. Such communication shall, when taken in conjunction with the Offer, be deemed to constitute a valid, legally binding and enforceable agreement for the sale and purchase of such Offered Shares. Sale of the Offered Shares to be sold to the corporation pursuant to this Article VI shall be made at the offices of the corporation on the 20th day following the date the Offer is made (or if such 20th day is not a business day, then on the next succeeding business day). Such sale shall be effected by the Offeror's delivery to the corporation of a certificate or certificates evidencing the Offered Shares to be purchased by it, duly endorsed for transfer to the corporation against payment to the Offeror of the purchase price therefor by

the corporation.

(d) If the corporation fails to exercise its right to purchase all of the Offered Shares described in the Offer, such Offeror (if it is not a Major Shareholder as that term is defined in the Shareholders' Agreement) may, not later than one hundred twenty (120) days following delivery to the corporation of the original Offer, enter into an agreement providing for the closing of the transfer of the Offered Shares covered by the Offer on terms and conditions materially no more favorable to the proposed Transferee than those described in the Offer. Any proposed transfer on terms and conditions materially more favorable to the Proposed Transferee than those described in the offer, as well as any subsequent proposed transfer of any of the Shares held by the Offeror, shall again be subject to the right of first refusal of the corporation and shall require compliance by a Offeror with the procedures described in this Article VI.

(e) If the Offeror is a Major Shareholder and the corporation has failed to exercise its purchase rights set forth above, then such Offeror must follow the procedures set forth in Section 3 of the Shareholders' Agreement prior to transferring the Offered Shares, except that such Offeror need not make the Offer again to the corporation.

(f) At the corporation's option, it can require that a conveyance of Shares to a person other than a Major Shareholder be conditioned upon (i) the receipt by the corporation of an opinion of legal counsel satisfactory to it that no violation of any securities laws or loss of exemption from registration under any such laws will result from such a conveyance or (ii) the receipt by the corporation of a "no action" letter from the SEC to the same effect covering such conveyance and an equivalent ruling from each applicable state authority, each in form satisfactory to the corporation.

(g) The provisions of this Article VI shall terminate and have no further effect upon the closing of a firm commitment underwritten public offering, pursuant to an effective registration statement under the Securities Act of 1933 or similar legislation of another country, covering the offer and sale by the Company of Common Stock in which the net proceeds to the Company are at least \$10 million.

**ARTICLE VII  
LIABILITY OF DIRECTORS**

The directors of the corporation shall have no liability to the corporation or to its stockholders and shall be indemnified by the corporation against such liability to the extent permitted by Section 102(b)(7) of the General Corporation Law of Delaware and otherwise to the maximum extent permitted under the laws of the State of Delaware.

**ARTICLE VIII  
AMENDMENT OF CERTIFICATE**

The corporation reserves the right to amend, alter or repeal any provision contained in this Seventh Restated Certification of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, I have executed this Seventh Restated Certificate of Incorporation on this 10<sup>th</sup> day of February, 1999.

  
\_\_\_\_\_  
David Tarrant  
President and CEO

Attest:

  
\_\_\_\_\_  
Stephen Harrison  
secretary

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