

12-06-2000

U.S. DEPARTMENT OF COMMERCE

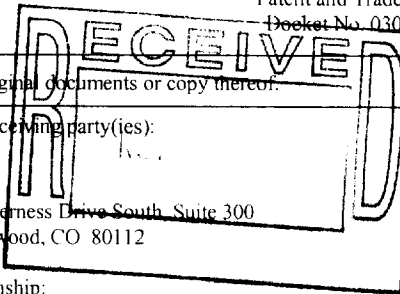


1 SHEET

101540808

Patent and Trademark Office
Docket No. 030270.2000SS

11-14-00



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

<p>1. Name of Conveying party(ies): Agilera.com, Inc.</p> <p><input type="checkbox"/> Individual(s) <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation-State: Delaware <input type="checkbox"/> Other</p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies): Name: Agilera, Inc. Street Address: 400 Inverness Drive South, Suite 300 Englewood, CO 80112</p> <p><input type="checkbox"/> Individual(s) citizenship: _____ <input type="checkbox"/> Association: _____ <input type="checkbox"/> General Partnership: _____ <input type="checkbox"/> Limited Partnership: _____ <input checked="" type="checkbox"/> Corporation-State: <u>Delaware</u> <input type="checkbox"/> Other: _____</p> <p>Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>3. Nature of conveyance:</p> <p><input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input checked="" type="checkbox"/> Change of Name <input type="checkbox"/> Other: _____</p> <p>Execution Date: August 2, 2000</p>	
<p>4. Application number(s) or registration number(s):</p> <p>A. Trademark Application No.(s): 75/906,480; 75/906,340; 76/045,811 B. Registration No.(s)</p> <p>Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>5. Name and address of party to whom correspondence concerning document should be mailed: Rochelle D. Alpert, Esq. Brobeck, Phleger & Harrison LLP Spear Street Tower One Market San Francisco, CA 94105</p>	<p>6. Total number of applications and trademark registrations involved: 3</p> <p>7. Total fee (37 C.F.R. § 3.41): \$90.00</p> <p><input checked="" type="checkbox"/> Enclosed <input type="checkbox"/> Authorized to be charged to deposit account, referencing Attorney Docket: 030270.2000SS</p> <p>8. Deposit account number: <u>02-3950</u></p>

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. § 1.21 which may be required by this paper, or to credit any overpayment to **Deposit Account No. 02-3950**.

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.

Name: Rochelle D. Alpert

Signature

Date

Total number of pages comprising cover sheet, attachment and document: 25

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

12/05/2000 MTHAI1 00000283 75906480

01 FC:481 40.00 OP
02 FC:482 50.00 OP

State of Delaware
Office of the Secretary of State

PAGE 1

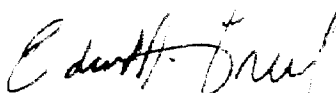
I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "AGILERA.COM, INC.", FILED IN THIS OFFICE ON THE SECOND DAY OF AUGUST, A.D. 2000, AT 9 O'CLOCK A.M.

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



2998088 8100

001391276



Edward J. Freel, Secretary of State

AUTHENTICATION: 0598223

DATE: 08-03-00

TRADEMARK
REEL: 002189 FRAME: 0251

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
AGILERA.COM, INC.**

(Pursuant to Sections 228, 242 and 245 of the
General Corporation Law of the State of Delaware)

Agilera.com, Inc. (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "General Corporation Law"),

DOES HEREBY CERTIFY:

FIRST: That the Corporation was originally incorporated in Delaware under the name of CIBER Global Outsourcing, Inc. ("CIBER") and the date of its filing of its original Certificate of Incorporation with the Secretary of State of Delaware was January 27, 1999, was later amended on June 28, 1999 and December 22, 1999, was amended and restated on February 23, 2000, was corrected on March 1, 2000, was amended by a Change of Registered Agent filing on March 13, 2000, and was further amended pursuant to a Certificate of Designation of Powers, Preferences, Rights, Qualifications, Limitations and Restrictions of Series A Convertible Preferred Stock (the "Certificate of Designation") on March 17, 2000.

SECOND: This Second Amended and Restated Certificate of Incorporation was duly adopted by the board of directors of the Corporation and by unanimous written consent of the stockholders in accordance with the provisions of Sections 141, 228, 242 and 245 of the General Corporation Law and it restates, integrates and further amends the provisions of the Certificate of Incorporation of the Corporation;

THIRD: One of the amendments effected by this Second Amended and Restated Certificate of Incorporation is to change the name of the Corporation to Agilera, Inc.;

FOURTH: The text of the Second Amended and Restated Certificate of Incorporation is hereby restated and further amended to read in its entirety as follows:

SECOND AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

AGILERA, INC.

ARTICLE I.

The name of this Corporation is Agilera, Inc. (the "Corporation")

ARTICLE II.

The address of the registered office of the Corporation in the State of is 9 East Loockerman Street, City of Dover, County of Kent, Delaware 19901 and the name of the registered agent at that address is National Registered Agents, Inc.

ARTICLE III.

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

ARTICLE IV.

4.1 Authorized Stock. This Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is one hundred million (100,000,000) shares. Sixty million (60,000,000) shares shall be Common Stock, \$0.001 par value (the "Common Stock"), and forty million (40,000,000) shares shall be Preferred Stock, \$0.001 par value (the "Preferred Stock"), of which Fifteen Million (15,000,000) of the authorized shares of Preferred Stock are hereby designated "Series A Convertible Preferred Stock" (the "Series A Preferred") and 17,000,000 of the authorized shares of Preferred Stock are hereby designated "Series B Preferred Stock" (the "Series B Preferred" and, together with the Series A Preferred, the "Convertible Preferred").

4.2 Common Stock. Each holder of Common Stock shall be entitled to one vote for each share of Common Stock held on all matters as to which holders of Common Stock shall be entitled to vote. Except for and subject to those preferences, rights, and privileges expressly granted to the holders of Preferred Stock, and except as may be provided by the laws of the State of Delaware, the holders of Common Stock shall have exclusively all other rights of stockholders of the Corporation, including, but not by way of limitation: (i) the right to receive dividends, when, as and if declared by the board of directors out of assets lawfully available therefor; and (ii) in the event of any distribution of assets upon the dissolution and liquidation of the Corporation, the right to receive ratably and equally all of the assets of the Corporation.

4.3 Preferred Stock.

(A) Additional Series of Preferred Stock. The board of directors of the Corporation is authorized, subject to limitations prescribed by law and this Second Amended and Restated Certificate of Incorporation, to provide by resolution or resolutions for the issuance of the remaining shares of

Preferred Stock as a class or in a series, and by filing a certificate of designations pursuant to the General Corporation Law of the State of Delaware setting forth a copy of such resolution or resolutions, to fix or alter the voting powers, designations, preferences, rights, qualifications, limitations and restrictions of any wholly unissued class of Preferred Stock, or any wholly unissued series of any such class, and the number of shares constituting any such series and the designation thereof, or any of them, and to increase or decrease the number of shares of any series (other than the Convertible Preferred Stock designated herein) subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

(B) Convertible Preferred. The rights, preferences, privileges, restrictions and other matters relating to the Convertible Preferred are as follows:

1. **Dividend Rights.**

(a) **Declared Dividends.** Holders of Convertible Preferred, in preference to the holders of Common Stock and any other stock of the Corporation that is not by its terms expressly senior in right of payment to the Convertible Preferred (collectively, "Junior Stock"), shall be entitled to receive dividends, when and as declared by the Board of Directors of the Corporation (the "Board"), but only out of funds that are legally available therefor. In the event that the Corporation declares or pays any dividends upon the Common Stock (whether payable in cash, securities or other property) other than dividends payable solely in shares of Common Stock, the Corporation shall also declare and pay to the holders of the Convertible Preferred at the same time that it declares and pays such dividends to the holders of the Common Stock, the dividends that would have been declared and paid with respect to the Common Stock issuable upon conversion of the Convertible Preferred had all of the outstanding Convertible Preferred been converted immediately prior to the record date for such dividend, or if no record date is fixed, the date as of which the record holders of Common Stock entitled to such dividends are to be determined. Such dividends shall not be cumulative.

(b) **Preference.** So long as any Convertible Preferred remains outstanding, without the prior written consent of the Required Holders, the Corporation shall not, nor shall it permit any Subsidiary to, redeem, purchase or otherwise acquire directly or indirectly any Junior Stock, nor shall the Corporation directly or indirectly pay or declare any dividend or make any distribution upon any Junior Stock. The provisions of this Section 1(b) shall not, however, apply to (i) the acquisition of shares of any Junior Stock in exchange for shares of any other Junior Stock, (ii) the payment of cash dividends on the Common Stock to the extent that equivalent dividends are paid on the Convertible Preferred as provided above, or (iii) any repurchase of any Reserved Employee Stock from former employees, officers, directors or consultants in connection with termination of employment or service as an officer, director or consultant pursuant to an agreement that has been approved by the Board.

2. **Voting Rights.**

(a) **Generally.** Except as otherwise provided herein or as required by law, the Convertible Preferred shall vote with the shares of the Common Stock (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 any share of Convertible Preferred shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Convertible Preferred are convertible (pursuant to Section 5 below) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

(b) **Election of Directors.**

(i) **Series A Directors.** In the election of directors of the Corporation, the holders of the Series A Preferred, voting separately as a single class to the exclusion of all other classes of the Corporation's capital stock and with each share of Series A Preferred entitled to one vote, shall be entitled to elect three directors to serve on the Board until such persons' successors are duly elected by the holders of the Series A Preferred or such persons are removed from office by the holders of the Series A Preferred. If the holders of the Series A Preferred for any reason fail to elect a director to fill any such directorship, such position shall remain vacant until such time as the holders of the Series A Preferred elect a director to fill such position and shall not be filled by resolution or vote of the Board or the Corporation's other stockholders.

(ii) **Series B Director.** In the election of directors of the Corporation, the holders of the Series B Preferred, voting separately as a single class to the exclusion of all other classes of the Corporation's capital stock and with each share of Series B Preferred entitled to one vote, shall be entitled to elect one director to serve on the Board until such person's successor is duly elected by the holders of the Series B Preferred or such person is removed from office by the holders of the Series B Preferred. If the holders of the Series B Preferred for any reason fail to elect a director to fill any such directorship, such position shall remain vacant until such time as the holders of the Series B Preferred elect a director to fill such position and shall not be filled by resolution or vote of the Board or the Corporation's other stockholders.

(iii) **Event of Noncompliance.**

(A) **Series A Preferred.** During the existence of a Series A Event of Noncompliance and for a period of 5 business days after such Series A Event of Noncompliance has been cured or waived, the directors elected by the holders of Series A Preferred shall be deemed to constitute a separate class of directors of the Corporation within the meaning of Section 141(d) of the Delaware General Corporation Law, and such directors shall collectively be entitled to cast in the aggregate a number of votes on each matter considered by the Board (including for purposes of determining the existence of a quorum) equal to the sum of the number of votes entitled to be cast by all other members of the Board plus one.

(B) **Convertible Preferred.** During the existence of a Combined Event of Noncompliance and for a period of 5 business days after such Combined Event of Noncompliance has been cured or waived, the directors elected by the holders of Series A Preferred and the director elected by the holders of Series B Preferred collectively shall be deemed to constitute a separate class of directors of the Corporation within the meaning of Section 141(d) of the Delaware General Corporation Law, and such directors shall collectively be entitled to cast in the aggregate a number of votes on each matter considered by the Board (including for purposes of determining the existence of a quorum) equal to the sum of the number of votes entitled to be cast by all other members of the Board plus one.

(C) **Limitations on Action, Voting Procedures.** At any time the foregoing provisions of this Section 4.3(B)(2)(b)(iii) are in effect:

(I) except during the existence of an Event of Liquidity Noncompliance, the Board shall not authorize any of the following actions except upon the affirmative vote or written consent of at least 75% of the members of the Board: (I) any amendment or modification to the provisions of the Platform Services Agreement, (II) any action requiring stockholder approval under the Delaware General Corporation Law, (III) any

material transaction with an affiliate of the Corporation, (IV) the issuance of any equity securities or (V) the termination of any member of the senior management of the Corporation;

(2) each member of the special class created under this Section 4.3(B)(2)(b)(iii) shall be entitled to cast that number of votes equal to the aggregate number of votes to be cast by such class divided by the number of directors in such class (rounded to the nearest whole number); and

(3) directors representing a majority of the number of votes entitled to be cast by all members of the Board will be necessary and sufficient to constitute a quorum for the transaction of business and, unless otherwise specifically provided by the laws of the State of Delaware or the bylaws of the Corporation, an act approved by a vote of at least a majority of the votes entitled to be cast by all members of the Board (whether or not present at any meeting) at which there is a quorum will be required as the action of the Board.

(iii) Election, Vacancies and Removal of Preferred Directors. At any meeting (or in a written consent in lieu thereof) held for the purpose of electing directors at a time when a series of Convertible Preferred is entitled to vote for the election of directors (A) the presence in person or by proxy (or the written consent) of the holders of a majority of the shares of such series of Convertible Preferred then outstanding shall constitute a quorum of such series of Convertible Preferred for the election of directors to be elected solely by the holders of the such series of Convertible Preferred and (B) the affirmative vote of such majority of the shares of such series of Convertible Preferred present in person or represented by proxy or, in the event of a written consent, a majority of the shares of such series of Convertible Preferred then outstanding, shall be required to elect such directors. A director elected pursuant to this Section 2(b) may be removed during the aforesaid term of office, whether with or without cause, only by the affirmative vote (or written consent) of the holders of the respective series of Convertible Preferred having elected such director.

(c) **Series A Class Vote Requirement.** In the event that the Board approves any of the following actions, until the earliest of (i) January 31, 2002, (ii) a 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 or (iii) the date on which Verio, LLC, together with its affiliates, ceases to hold a majority of the outstanding shares of Series A Preferred, the Corporation shall not, until the Board shall have submitted such proposed actions for the approval of the holders of at least a majority of the outstanding shares of Series A Preferred:

(I) effect any sale or other conveyance of all or substantially all of the assets of the Corporation, or any consolidation or merger involving the Corporation, or any other transaction or series of related transactions pursuant to which the Corporation's stockholders immediately prior thereto own less than 50% of the voting power of the Corporation's capital stock immediately after the transaction, in each case where such sale or conveyance is to, or such merger or other transaction is with, a Competing Entity; or

(II) issue equity securities (or any securities convertible into or exchangeable for equity securities including, without limitation, debt securities containing equity features) to a Competing Entity, other than in connection with an initial public offering of the Corporation's equity securities.

(d) **Convertible Preferred Class Vote Requirement.** In the event that the Board approves any of the following actions, for so long as any Convertible Preferred is outstanding and represents at least 10% of fully-diluted Common Stock of the Corporation, the Corporation shall not, until the Board shall have submitted such proposed actions for the approval of the Required Holders:

(i) subject to Section 4.3(B)(7), amend or repeal any provision of, or add any provision to, the Certificate of Incorporation or bylaws of the Corporation if such action would adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, or create a class or series of stock senior to or on a parity with the rights and preferences of, the Convertible Preferred;

(ii) increase the number of shares of Common Stock authorized for issuance as Reserved Employee Stock; or

(iii) prior to March 27, 2001, make any material change to any strategic plan or operating budget of the Corporation as previously approved by the Board.

3. **Liquidation Rights.**

(a) **Liquidation Value.** Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Junior Stock, the holders of Convertible Preferred shall be entitled to be paid out of the assets of the Corporation an amount with respect to each share of Convertible Preferred equal to the sum of (i) the Original Issue Price applicable to such share plus (ii) all declared but unpaid dividends thereon, if any (the "Liquidation Value").

(b) **Participation.** The holders of Convertible Preferred shall not participate in any additional distributions or exercise any conversion rights after the payment of the full liquidation preference set forth in Section 4.3(B)(3)(a).

(c) **Liquidation Events.** At the option of the Required Holders, the following events shall be considered a liquidation for purposes of Section 4.3(B)(3)(a).

(i) any merger, consolidation, business combination, reorganization or recapitalization of the Corporation in which the stockholders of the Corporation immediately prior to such transaction own capital stock representing less than 50% of the Corporation's voting power immediately after such transaction, or any transaction or series of related transactions in which capital stock representing in excess of 50% of the Corporation's voting power is transferred (an "Acquisition"); or

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

(d) **Proportionate Payments.** If, upon any liquidation, dissolution or winding up, the assets of the Corporation shall be insufficient to make payment in full to all holders of Convertible Preferred, then such assets shall be distributed among the holders of Convertible Preferred at the time outstanding ratably in proportion to the full amounts to which they would otherwise respectively be entitled.

4. **Redemption Rights.**

(a) **Incremental Redemption Option.** Upon receipt by the Corporation of a written notice executed by the holders of a majority of the Convertible Preferred no later than 30 days prior to the

dates set forth below, the Corporation shall redeem a number of shares of Convertible Preferred equal to (A) fifty percent of the total number of shares of Convertible Preferred outstanding on July 31, 2005 and (B) all of the remaining outstanding shares of Convertible Preferred on July 31, 2006 (each, a "Scheduled Redemption Date").

(b) **Redemption Payments.** For each share of Convertible Preferred that is to be redeemed hereunder pursuant to Section 4(a), the Corporation shall be obligated on a Scheduled Redemption Date to pay to the holder thereof (upon surrender by such holder at the Corporation's principal office of the certificate representing such share) an amount in cash equal to the Liquidation Value of such share. If the funds of the Corporation legally available for redemption of Convertible Preferred on the Scheduled Redemption Date are insufficient to redeem the total number of shares to be redeemed, those funds that are legally available shall be used to redeem the maximum possible number of shares pro rata among the holders of Convertible Preferred to be redeemed based upon the aggregate Liquidation Value of shares held by each such holder. At any time thereafter when additional funds of the Corporation are legally available for the redemption of Convertible Preferred, such funds shall immediately be used to redeem the balance of the shares that the Corporation has become obligated to redeem but that it has not redeemed.

(c) **Notice of Redemption.** The Corporation shall mail to each holder of Convertible Preferred written notice of the occurrence of each Scheduled Redemption Date with respect to any Convertible Preferred held by such holder not more than 60 nor fewer than 45 days prior to a Scheduled Redemption Date. Such notice shall state the number of shares of Convertible Preferred held by such holder that are subject to redemption on such Scheduled Redemption Date upon receipt of a notice from the holders thereof in accordance with Section 4.3(B)(4)(a). Any holder desiring to require the Corporation to redeem all or a portion of its shares of the affected series of Convertible Preferred on such Scheduled Redemption Date shall so notify the Corporation in writing no fewer than ten days prior to such Scheduled Redemption Date. Such notice shall state the number of shares of such series of Convertible Preferred to be redeemed by the Corporation on such Scheduled Redemption Date. In case fewer than the total number of shares represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares shall be issued to the holder thereof without cost to such holder within five business days after surrender of the certificate representing the redeemed shares.

(d) **Determination of the Number of Shares to be Redeemed.** The number of shares of Convertible Preferred to be redeemed from each holder thereof in redemptions hereunder shall be the number of shares determined by multiplying the total number of shares of such series of Convertible Preferred to be redeemed by a fraction, the numerator of which shall be the total number of shares of such series of Convertible Preferred then held by such holder and the denominator of which shall be the total number of shares of such series of Convertible Preferred then outstanding.

(e) **Other Redemptions or Acquisitions.** The Corporation shall not, nor shall it permit any Subsidiary to, redeem or otherwise acquire any shares of Convertible Preferred, except as expressly authorized herein or pursuant to a purchase offer made pro rata to all holders of Convertible Preferred on the basis of the number of shares owned by each such holder.

5. Conversion Rights.

The holders of the Convertible Preferred shall have the following rights with respect to the conversion of the Convertible Preferred into shares of Common Stock:

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 4.3(B)(5), any shares of Convertible Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to

1823929.07
LIB: CH

which a holder of Convertible Preferred shall be entitled to receive upon conversion shall be the product obtained by multiplying the Series A Conversion Rate or the Series B Conversion Rate (as applicable) then in effect (determined as provided in Section 4.3(B)(5)(b)) by the number of shares of Series A Preferred or Series B Preferred Stock, respectively, being converted.

(b) Conversion Rate.

(i) Series A Preferred. The conversion rate in effect at any time for conversion of the Series A Preferred (the "**Series A Conversion Rate**") shall be the quotient obtained by dividing the Original Series A Issue Price, plus any declared but unpaid dividends thereon, by the Series A Conversion Price. The "**Original Series A Issue Price**" shall be \$3.25, as appropriately adjusted for any future stock splits, stock combinations, stock dividends or similar transactions affecting the Series A Preferred. The conversion price for the Series A Preferred (the "**Series A Conversion Price**") is the Original Series A Issue Price, and shall be subject to adjustment as set forth in Section 4.3(B)(5)(c).

(ii) Series B Preferred. The conversion rate in effect at any time for conversion of the Series B Preferred (the "**Series B Conversion Rate**") shall be the quotient obtained by dividing the Original Series B Issue Price, plus any declared but unpaid dividends thereon, by the Series B Conversion Price. The "**Original Series B Issue Price**" shall be \$5.00, as appropriately adjusted for any future stock splits, stock combinations, stock dividends or similar transactions affecting the Series B Preferred. The conversion price for the Series B Preferred (the "**Series B Conversion Price**" and, together with the Series A Conversion Price, each a "**Conversion Price**") shall initially be the Original Series B Issue Price and shall be subject to adjustment as set forth in Section 4.3(B)(5)(c).

(c) Conversion Price. Each Conversion Price shall be adjusted from time to time in accordance with this Section 4.3(B)(5). If and whenever on or after the Original Series B Issue Date the Corporation issues or sells, or in accordance with this Section 4.3(B)(5)(c) is deemed to have issued or sold, any shares of its Common Stock (other than pursuant to a Permitted Issuance) for a consideration per share less than either Conversion Price in effect immediately prior to the time of such issue or sale, then immediately upon such issue or sale or deemed issue or sale each such affected Conversion Price shall be reduced to the amount determined by dividing (a) the sum of (1) the product derived by multiplying the affected Conversion Price in effect immediately prior to such issue or sale by the number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale, plus (2) the consideration, if any, received or deemed to have been received by the Corporation upon such issue or sale, by (b) the number of shares of Common Stock Deemed Outstanding immediately after such issue or sale. All references to a Conversion Price herein shall mean such Conversion Price as so adjusted. For purposes of determining each adjusted Conversion Price, the following shall be applicable:

(i) Issuance of Rights or Options. If the Corporation in any manner grants or sells any Options and the price per share for which Common Stock is issuable upon the exercise of such Options, or upon conversion or exchange of any Convertible Securities issuable upon exercise of such Options, is less than either Conversion Price in effect immediately prior to the time of the granting or sale of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued and sold by the Corporation at the time of the granting or sale of such Options for such price per share. For purposes of this paragraph, the "price per share for which Common Stock is issuable" shall be determined by dividing (A) the total amount, if any, received or receivable by the Corporation as consideration for the granting or sale of such Options, plus the minimum aggregate amount of additional consideration payable to the

Corporation upon exercise of all such Options, plus in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the issuance or sale of such Convertible Securities and the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options. No further adjustment of a Conversion Price shall be made when Convertible Securities are actually issued upon the exercise of such Options or when Common Stock is actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(ii) **Issuance of Convertible Securities.** If the Corporation in any manner issues or sells any Convertible Securities and the price per share for which Common Stock is issuable upon conversion or exchange thereof is less than a Conversion Price in effect immediately prior to the time of such issue or sale, then the maximum number of shares of Common Stock issuable upon conversion or exchange of such Convertible Securities shall be deemed to have been issued and sold by the Corporation at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this paragraph, the "price per share for which Common Stock is issuable" shall be determined by dividing (A) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities. No further adjustment of a Conversion Price shall be made when Common Stock is actually issued upon the conversion or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustments of a Conversion Price had been or are to be made pursuant to other provisions of this Section 4.3(B)(5), no further adjustment of such Conversion Price shall be made by reason of such issue or sale.

(iii) **Change in Option Price or Conversion Rate.** If the purchase price provided for in any Options, the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock changes at any time, each Conversion Price in effect at the time of such change shall be immediately adjusted to the respective Conversion Price that would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold.

(iv) **Treatment of Expired Options and Unexercised Convertible Securities.** Upon the expiration of any Option or the termination of any right to convert or exchange any Convertible Security without the exercise of any such Option or right, each Conversion Price that was adjusted upon issuance of such Option or Convertible Security shall be adjusted immediately to the respective Conversion Price that would have been in effect at the time of such expiration or termination had such Option or Convertible Security, to the extent outstanding immediately prior to such expiration or termination, never been issued.

(v) **Calculation of Consideration Received.** If any Common Stock, Option or Convertible Security is issued or sold or deemed to have been issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor (net of discounts, commissions and related expenses). If any Common Stock, Option or Convertible Security is issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of such consideration. If any Common Stock, Option or Convertible Security is issued to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor shall be deemed to be the

fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Option or Convertible Security, as the case may be. The fair value of any consideration other than cash and securities shall be determined jointly by the Corporation and the holders of a majority of the outstanding shares of each series of Convertible Preferred. If such parties are unable to reach agreement within a reasonable period of time, the fair value of such consideration shall be determined by an independent appraiser experienced in valuing such type of consideration jointly selected by the Corporation and the holders of a majority of the outstanding shares of each series of Convertible Preferred. The determination of such appraiser shall be final and binding upon the parties, and the fees and expenses of such appraiser shall be borne by the Corporation.

(vi) **Integrated Transactions.** In case any Option is issued in connection with the issue or sale of other securities of the Corporation, together comprising one integrated transaction in which no specific consideration is allocated to such Option by the parties thereto, the Option shall be deemed to have been issued for a consideration of \$.001.

(vii) **Treasury Shares.** The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation or any Subsidiary, and the disposition of any shares so owned or held shall be considered an issue or sale of Common Stock.

(d) **Adjustment for Stock Splits and Combinations.** If the Corporation shall at any time or from time to time after the Original Series B Issue Date effect a subdivision of the outstanding Common Stock, each Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Corporation shall at any time or from time to time after the Original Series B Issue Date combine the outstanding shares of Common Stock into a smaller number of shares, each Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4.3(B)(5)(d) shall 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 Series B Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event each Conversion Price that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying such Conversion Price then in effect by a fraction (1) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (2) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; *provided, however,* that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, each Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter such Conversion Price shall be adjusted pursuant to this Section 4.3(B)(5)(e) to reflect the actual payment of such dividend or distribution.

(f) **Adjustments for Other Dividends and Distributions.** If the Corporation at any time or from time to time after the Original Series B Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, in each such event provision shall be made so that the holders of the Convertible Preferred shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of other securities of the

Corporation that they would have received had their shares of Convertible Preferred been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 4.3(B)(5) with respect to the rights of the holders of the Convertible Preferred or with respect to such other securities by their terms.

(g) Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Original Series B Issue Date, the Common Stock issuable upon the conversion of the Convertible Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4.3(B)(5)), in any such event each holder of Convertible Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable in connection with such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Convertible Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustments as provided herein or with respect to such other securities or property by the terms thereof.

(h) Reorganizations, Mergers, Consolidations or Sales of Assets. If at any time or from time to time after the Original Series B 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 4.3(B)(5)), as a part of such capital reorganization, provision shall be made so that the holders of the Convertible Preferred shall thereafter be entitled to receive upon conversion of the Convertible Preferred the number of shares of stock or other securities or property of the Corporation to which a holder of the maximum number of shares of Common Stock deliverable upon conversion of the Convertible Preferred would have been entitled in connection with such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4.3(B)(5) with respect to the rights of the holders of Convertible Preferred after the capital reorganization to the end that the provisions of this Section 4.3(B)(5) (including adjustment of each Conversion Price then in effect and the number of shares issuable upon conversion of each respective series of Convertible Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(i) Certificate of Adjustment. In each case of an adjustment or readjustment of a Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Convertible Preferred, the Corporation, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of the affected Convertible Preferred at the holder's address as shown in the Corporation's records. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (1) the consideration received or deemed to be received by the Corporation for any additional shares of Common Stock issued or sold or deemed to have been issued or sold, (2) the affected Conversion Price at the time in effect, (3) the number of additional shares of Common Stock issued or sold or deemed to have been issued or sold, and (4) the type and amount, if any, of other property that at the time would be received upon conversion of the Convertible Preferred.

(j) Notices of Record Date. Upon (i) 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 or other distribution, or (ii) any Acquisition or other capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation with or into any other corporation, any Asset Transfer, or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Convertible Preferred at least 20 days prior to the record date specified therein a notice specifying (1) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (2) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (3) the date, if any, that is to be fixed for determining the holders of record of Common Stock (or other securities) that shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(k) **Automatic Conversion.**

(i) **Series A Automatic Conversion.** Each share of Series A Preferred shall automatically be converted into shares of Common Stock, based on its then-effective Conversion Price, at any time upon the affirmative vote of the holders of at least 70% of the outstanding shares of Series A Preferred, or 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 (i) the per share price to the public is at least \$6.50, as adjusted for stock splits, stock dividends, recapitalizations and similar transactions affecting the Series A Preferred, and (ii) the gross cash proceeds to the Corporation (before underwriting discounts, commissions and fees) are at least \$40,000,000 (a "Series A Initial Public Offering"); *provided*, that any such conversion shall be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering and the holder(s) entitled to receive the Common Stock issuable upon such conversion shall not be deemed to have converted such Convertible Preferred Stock until the closing of such sale of securities. Upon such automatic conversion, all declared but unpaid dividends, if any, shall be paid in accordance with Section 5(l)(ii).

(ii) **Series B Automatic Conversion.** Each share of Series B Preferred shall automatically be converted into shares of Common Stock, based on its then-effective Conversion Price, at any time upon the affirmative vote of the holders of at least 70% of the outstanding shares of Series B Preferred, or 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 (i) the per share price to the public is at least \$10.00, as adjusted for stock splits, stock dividends, recapitalizations and similar transactions affecting the Series B Preferred, and (ii) the gross cash proceeds to the Corporation (before underwriting discounts, commissions and fees) are at least \$40,000,000 (a "Series B Initial Public Offering," together with a "Series A Initial Public Offering, an "Initial Public Offering"); *provided*, that any such conversion shall be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering and the holder(s) entitled to receive the Common Stock issuable upon such conversion shall not be deemed to have converted such Convertible Preferred Stock until the closing of such sale of securities. Upon such automatic conversion, all declared but unpaid dividends, if any, shall be paid in accordance with Section 5(l)(ii).

(l) Mechanics of Conversion.

(i) Optional Conversion. Each holder of Convertible Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 5 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Convertible Preferred, and shall give written notice to the Corporation at such office that such holder elects to convert the same. Such notice shall state the number of shares of Convertible Preferred being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board as of the date of such conversion), any declared but unpaid dividends on the shares of Convertible Preferred being converted. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificate representing the shares of Convertible Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(ii) Automatic Conversion. Upon the occurrence of the event specified in Section 5(k) above, the outstanding shares of Convertible Preferred shall be converted into Common Stock 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 shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Convertible Preferred 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, and to the extent requested by the Corporation posts a bond, in each case satisfactory to the Corporation, to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon surrender by any holder of the certificates formerly representing shares of Convertible Preferred at the office of the Corporation or any transfer agent for the Convertible Preferred, there shall 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 Convertible Preferred surrendered were convertible on the date on which such automatic conversion occurred, and the Corporation shall promptly pay in cash or, at the option of the Corporation, Common Stock (at the Common Stock's fair market value determined by the Board as of the date of such conversion) or, at the option of the Corporation, a combination of both, all declared but unpaid dividends on the shares of Convertible Preferred being converted. Until surrendered as provided above, each certificate formerly representing shares of Convertible Preferred shall be deemed for all corporate purposes to represent the number of shares of Common Stock resulting from such automatic conversion.

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

6. **Certain Definitions.**

"Acquisition" has the meaning set forth in Section 4.3(B)(3)(c)(i).

"Asset Transfer" has the meaning set forth in Section 4.3(B)(3)(c)(ii).

"Board" has the meaning set forth in Section 4.3(B)(1)(a).

"CIBER" has the meaning set forth in the introductory paragraph hereof.

"Combined Event of Noncompliance" means the occurrence of any of the following:

- (a) an Event of Liquidity Noncompliance;
- (b) the Corporation's breach or other failure to perform or observe any other material covenant or agreement set forth herein; or
- (c) the Corporation (severally or jointly with CIBER) becomes liable to the holders of the Series A Preferred for indemnification pursuant to the Series A Purchase Agreement in an aggregate amount equal to or greater than the sum of (i) \$9,908,855.00 and (ii) \$1 million (such sum, the "Cap Amount"); *provided, however*, that such Combined Event of Noncompliance shall be deemed to have been cured upon CIBER's full satisfaction of such indemnification liability, including any amounts of such liability that exceed the Cap Amount (the "Cure Payment"); *provided, further*, that if the total amount of such liability is less than or equal to \$20 million and CIBER pays the Cure Payment within five days after the date of such Combined Event of Noncompliance, no Combined Event of Noncompliance shall have been deemed to have occurred.

"Common Stock" has the meaning set forth in Section 4.1.

"Common Stock Deemed Outstanding" means, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock that would be issued upon conversion or exchange of all of the Corporation's outstanding Convertible Securities (including Convertible Securities issuable upon exercise of Options).

"Competing Entity" means any individual, corporation, partnership, company, joint venture, estate, trust, cooperative, foundation, society, political party, union, firm or other enterprise, association, organization or other entity, or any subsidiary or affiliate thereof, that is engaged in the business of web hosting, application hosting, e-commerce (including, without limitation, business-to-business and business-to-consumer e-commerce) or providing related Internet solutions to businesses.

"Conversion Price" has the meaning set forth in Section 4.3(B)(5)(b)(ii).

"Convertible Preferred" has the meaning set forth in Section 4.1.

"Convertible Securities" means any stock or securities directly or indirectly convertible into or exchangeable for Common Stock.

"Corporation" has the meaning set forth in Article I.

"Event of Liquidity Noncompliance" means any of the following:

(i) the Corporation fails to make any dividend, redemption or other payment with respect to the Convertible Preferred that it is required to make hereunder, whether or not such payment is legally permissible or is prohibited by any agreement to which the Corporation is subject; or

(ii) the Corporation or any Significant Subsidiary makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or an order, judgment or decree is entered adjudicating the Corporation or any Significant Subsidiary bankrupt or insolvent; or any order for relief with respect to the Corporation or any Significant Subsidiary is entered under the Federal Bankruptcy Code; or the Corporation or any Significant Subsidiary petitions or applies to any tribunal for the appointment of a custodian, trustee, receiver or liquidator of the Corporation or any Significant Subsidiary or of any substantial part of the assets of the Corporation or any Significant Subsidiary, or commences any proceeding (other than a proceeding for the voluntary liquidation and dissolution of a Subsidiary) relating to the Corporation or any Significant Subsidiary under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction; or any such petition or application is filed, or any such proceeding is commenced, against the Corporation or any Significant Subsidiary and either (a) the Corporation or any such Significant Subsidiary by any act indicates its approval thereof, consent thereto or acquiescence therein or (b) such petition, application or proceeding is not dismissed within 60 days.

"Initial Public Offering" has the meaning set forth in Section 4.3(B)(5)(k)(ii).

"Junior Stock" has the meaning set forth in Section 4.3(B)(1)(a).

"Liquidation Value" has the meaning set forth in Section 4.3(B)(3)(a).

"Options" means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

"Original Issue Price" means the Original Series A Issue Price or the Original Series B Issue Price, as applicable.

"Original Series A Issue Date" means the date the first share of Series A Preferred is issued pursuant to the terms of the Series A Purchase Agreement.

"Original Series A Issue Price" has the meaning set forth in Section 4.3(B)(5)(b)(i).

"Original Series B Issue Date" means the date the first share of Series B Preferred is issued pursuant to the terms of the Series B Purchase Agreement.

"Original Series B Issue Price" has the meaning set forth in Section 4.3(B)(5)(b)(ii).

"Permitted Issuance" means:

(a) any issuance of shares of Reserved Employee Stock or shares of Common Stock issued upon exercise or conversion of any other Option or Convertible Securities outstanding as of the Original Series B Issue Date;

(b) shares of Common Stock issued or issuable in a public offering after or in connection with which all outstanding shares of Convertible Preferred will be converted to Common Stock or upon exercise of warrants or rights granted to underwriters in connection with such a public offering;

(c) securities issued in connection with the acquisition of another business entity or business segment of any such entity by the Corporation by merger, purchase of substantially all the assets or other reorganization whereby the Corporation will own not less than 51% of the voting power of such business entity or business segment of any such entity;

(d) equity securities issued in connection with any borrowings or lease financings (and any Common Stock issued in connection with the exercise or conversion of such securities), whether or not presently authorized, including any type of loan or payment evidenced by any type of debt instrument, if such borrowing, loan or debt instrument is approved by a majority of the Board; or

(e) securities issued in connection with strategic transactions involving the Company and other entities (including (i) mergers, share exchanges, acquisitions or other business combinations, (ii) joint ventures, manufacturing, marketing or distribution arrangements or (iii) technology transfer or development arrangements); *provided*, that such strategic transactions and the issuance of securities therein have been approved by the Board; and *provided, further*, that such securities do not exceed (A) 5% of the outstanding shares of Common Stock on an as-converted and fully-diluted basis for any individual transaction or series of related transactions and (B) 10% of the outstanding shares of Common Stock on an as-converted and fully diluted basis in the aggregate for all such transactions.

“Platform Services Agreement” means the Platform Services Agreement by and between the Corporation and Verio Inc, as amended

“Preferred Stock” has the meaning set forth in Section 4.1.

“Required Holders” means the holders of at least a majority of the outstanding shares of Convertible Preferred

“Reserved Employee Stock” means 6,615,384 shares of Common Stock issued or issuable to employees, officers, directors or consultants of the Corporation and its Subsidiaries pursuant to the Corporation’s restricted stock purchase and incentive stock option programs.

“Scheduled Redemption Date” has the meaning set forth in Section 4.3(B)(4)(a).

“Series A Conversion Price” has the meaning set forth in Section 4.3(B)(5)(b)(i).

“Series A Conversion Rate” has the meaning set forth in Section 4.3(B)(5)(b)(i).

“Series A Event of Noncompliance” means, as long as Verio Inc. or any of its affiliates collectively hold at least 15% of the Common Stock Deemed Outstanding, the Corporation commits a blatant and obvious violation of the “preferred provider provisions” contained in Article III of the Platform Services Agreement, which default is not cured or waived by a majority of the holders of Series A Preferred within a reasonable period of time (not to exceed 45 days) after written notice of such default is provided to the Corporation by the holders of at least 70% of the Series A Preferred or, if such default is not capable of being cured, such default shall constitute a Series A Event of Noncompliance upon provision of such notice; *provided, however*, that no Series A Event of Noncompliance shall have occurred if the Corporation establishes (to the reasonable satisfaction of the holders of at least 70% of the Series A Preferred) that (a) the particular default has not been caused by knowing or purposeful conduct by the Corporation or any Subsidiary and (b) the Corporation has exercised, and continues to exercise, its reasonable efforts expeditiously to cure the default (if cure is possible).

“Series A Initial Public Offering” has the meaning set forth in Section 4.3(B)(5)(k)(i).

"Series A Preferred" has the meaning set forth in Section 4.1.

"Series A Purchase Agreement" means the Series A Convertible Preferred Stock Purchase Agreement dated February 29, 2000 by and among the Corporation, CIBER, and certain holders of shares of Series A Preferred.

"Series B Conversion Price" has the meaning set forth in Section 4.3(B)(5)(b)(ii).

"Series B Conversion Rate" has the meaning set forth in Section 4.3(B)(5)(b)(ii).

"Series B Initial Public Offering" has the meaning set forth in Section 4.3(B)(5)(k)(ii).

"Series B Preferred" has the meaning set forth in Section 4.1.

"Series B Purchase Agreement" means the Series B Preferred Stock Purchase Agreement dated on or about July 21, 2000 among the Corporation and the initial holders of the Series B Preferred Stock.

"Significant Subsidiary" means a "significant subsidiary" as such term is defined in Regulation S-X of the Securities and Exchange Commission.

"Subsidiary" means any corporation of which the shares of outstanding capital stock possessing a majority of the voting power (under ordinary circumstances) to elect the board of directors are, at the time as of which any determination is being made, owned by the Corporation either directly or indirectly through Subsidiaries.

7. Amendment and Waiver.

(a) **Series A Preferred.** No amendment, repeal, modification or waiver of any of the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of the Series A Preferred shall be binding or effective without the prior written consent of the holders of at least 70% of the Series A Preferred and no change in the terms hereof may be accomplished by merger or consolidation of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders of at least 70% of the Series A Preferred; *provided, however,* that any provision that requires a higher vote of holders of Series A Preferred may not be amended, waived or modified without such higher vote of the Series A Preferred holders. Any amendment, modification or waiver of any of the terms or provisions of the Series A Preferred by the holders of at least 70% of the Series A Preferred, whether prospective or retroactively effective, shall be binding upon all holders of Series A Preferred Stock.

(b) **Series B Preferred.** No amendment, repeal, modification or waiver of (i) any of the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of the Series B Preferred or (ii) Section 2(c) shall be binding or effective without the prior written consent of the holders of at least 70% of the Series B Preferred and no change in the foregoing terms may be accomplished by merger or consolidation of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders of at least 70% of the Series B Preferred; *provided, however,* that any provision that requires a higher vote of holders of Series B Preferred may not be amended, waived or modified without such higher vote of the Series B Preferred holders. Any amendment, modification or waiver of any of the terms or provisions of the Series B Preferred by the holders of at least 70% of the Series B Preferred, whether prospective or retroactively effective, shall be binding upon all holders of Series B Preferred Stock.

8. General Provisions.

(a) **Registration of Transfer.** The Corporation shall keep at its principal office a register for the registration of the Convertible Preferred. Upon the surrender of any certificate representing Convertible Preferred at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate.

(b) **Replacement.** Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Convertible Preferred, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided that if the holder is a financial institution or other institutional investor its own agreement shall be satisfactory), or in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

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

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

(e) **Payment of Taxes.** The Corporation shall 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 Convertible Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Convertible Preferred so converted were registered.

(f) **No Dilution or Impairment.** The Corporation shall not amend its Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation.

(g) **No Reissuance of Convertible Preferred.** No share or shares of Convertible Preferred acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued.

ARTICLE V.

5.1 **Number of Directors.** The number of directors of the Corporation shall be fixed from time to time in the manner provided in the bylaws and may be increased or decreased from time to time in the manner provided in the bylaws.

5.2 **Election and Term.** Elections of directors need not be by written ballot unless the bylaws of the Corporation shall so provide. Advance notice of stockholder nominations for the election of directors and of any other business to be brought before any meeting of the stockholders shall be given in the manner provided in the bylaws of the Corporation. At each annual meeting of stockholders, and subject to Section 5.3, directors of the Corporation shall be elected to hold office until the expiration of the term for which they are elected, or until their successors have been duly elected and qualified; except that if any such election shall not be so held, such election shall take place at a stockholders' meeting called and held in accordance with the Delaware General Corporation Law.

5.3 **Classification of Directors.** The directors of the Corporation shall be divided into three (3) classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. For the purposes hereof, the initial Class I, Class II and Class III directors shall be those directors so designated by a resolution of the Board of Directors. At the first annual meeting of stockholders following the filing of this Second Amended and Restated Certificate of Incorporation, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three (3) years. At the second annual meeting of stockholders following the filing of this Second Amended and Restated Certificate of Incorporation, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three (3) years. At the third annual meeting of stockholders following the filing of this Second Amended and Restated Certificate of Incorporation, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three (3) years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three (3) years to succeed the directors of the class whose terms expire at such annual meeting. If the number of directors is hereafter changed, each director then serving as such shall nevertheless continue as a director of the Class of which he is a member until the expiration of his current term and any newly created directorships or decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as is practicable.

5.4 **Vacancies.** Subject to any voting agreement among the stockholders of the Corporation, newly-created directorships resulting from any increase in the number of directors and any vacancies on the board of directors resulting from death, resignation, disqualification, removal or other cause shall be filled solely by the affirmative vote of a majority of the remaining directors then in office or a sole remaining director, even if less than a quorum of the board of directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the new directorship that was created or in which the vacancy occurred and until such director's successor shall have been elected and qualified.

ARTICLE VI.

The board of directors of the Corporation is expressly authorized to make, alter or repeal the bylaws of the Corporation, but such authorization shall not divest or limit the stockholders' power to adopt, amend or repeal bylaws.

ARTICLE VII.

7.1 Meetings. Meetings of stockholders of the Corporation may be held within or without the State of Delaware, as the bylaws of the Corporation may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the board of directors of the Corporation or in the bylaws of the Corporation.

7.2 Stockholder Action. Any action required or permitted to be taken by the stockholders of the Corporation at a duly called annual or special meeting of such stockholders may be effected without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by stockholders holding not less than two-thirds of the voting power of the outstanding stock entitled to vote. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

ARTICLE VIII.

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

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

ARTICLE IX.

9.1 General. The Corporation shall indemnify, to the fullest extent permitted by applicable law as from time to time may be in effect, any person against all liability and expense (including, but not limited to, attorneys' fees and settlement costs) incurred by reason of the fact that he is or was a director or officer of the Corporation, or while serving as a director or officer of the Corporation, he is or was serving at the request of the Corporation as a director, officer, partner or trustee of, or in any similar managerial or fiduciary position of, or as an employee or agent of, another corporation, partnership, joint venture, trust, association or other entity, or by reason of any action alleged to have been taken or omitted in such capacity. Expenses (including attorneys' fees) incurred in defending an action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding to the fullest extent and under the circumstances permitted by the laws of the State of Delaware. The right to indemnification conferred upon such persons by this Article IX shall be a contract right. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, fiduciary or agent of the Corporation against any liability asserted against and incurred by such person in any such capacity or arising out of such person's position, whether or not the Corporation would have the power to indemnify against such liability under the provisions of this Article IX. The indemnification provided by this Article IX shall not be deemed exclusive of any

other rights to which those indemnified may be entitled under this Second Amended and Restated Certificate of Incorporation, any bylaw, agreement, vote of stockholders or disinterested directors, statute or otherwise and shall inure to the benefit of their heirs, executors and administrators. The provisions of this Article IX shall not be deemed to preclude the Corporation from indemnifying other persons from similar or other expenses and liabilities as the board of directors or the stockholders may determine in a specific instance or by resolution of general application.

9.2 Presumptions and Effect of Certain Proceedings.

A. In making a determination with respect to entitlement to indemnification, the person or persons or entity making such determination shall presume that such person is entitled to indemnification under this Article IX and the Corporation shall have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption.

B. The termination of any proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Second Amended and Restated Certificate of Incorporation or in the Corporation's bylaws) in and of itself adversely affect the right of any person to indemnification or create a presumption that such person did not act in good faith and in a manner that he reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal proceeding, that such person had reasonable cause to believe that his conduct was unlawful.

Neither the amendment nor the repeal of this Article, nor the adoption of any provision of the Second Amended and Restated Certificate of Incorporation or bylaws or of any statute inconsistent with this Article IX, shall eliminate or reduce the effect of this Article, in respect of any acts or omissions occurring prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE X.

The Corporation shall have authority, to the fullest extent now or hereafter permitted by the General Corporation Law of the State of Delaware, or by any other applicable law, to enter into any contract or transaction with one or more of its directors or officers, or with any corporation, partnership, joint venture, trust, association, or other entity in which one or more of its directors or officers are directors or officers, or have a financial interest, notwithstanding such relationships and notwithstanding the fact that the director or officer is present at or participates in the meeting of the board of directors or committee thereof which authorizes the contract or transaction.

ARTICLE XI.

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

this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

* * *

IN WITNESS WHEREOF, the Corporation has caused this Second Amended and Restated Certificate of Incorporation to be signed by the Chief Executive Officer/President and the Secretary of the Corporation this 2nd day of August, 2000.



Paul E. Rudolph
Chief Executive Officer and
Secretary