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U.S. DEPARTMENT OF COMMERCE U.S. 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): ehitex, Inc. 7-16-01
Individual(s) Association
General Partnership Limited Partnership
Corporation-State - Delaware
Other
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: Converge, Inc.
Internal Address:
Street Address: 10400 Ridgeview Court
City: Cupertino State: CA Zip: 95014
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

3. Nature of conveyance:
Assignment Merger
Security Agreement Change of Name
Other
Execution Date: December 19, 2000

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
78/033,009
Additional number(s) attached Yes No

B. Trademark Registration No.(s)

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Pillsbury Winthrop LLP
Internal Address: Calendar/Docketing Dept.
Street Address: P.O. Box 7880
City: San Francisco State: CA Zip: 94120

6. Total number of applications and registrations involved: 1
7. Total fee (37 CFR 3.41): \$ 40
Enclosed
Authorized to be charged to deposit account
8. Deposit account number:
(Attach duplicate copy of this page if paying by deposit account)

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.
Jason E. Garcia July 12, 2001
Name of Person Signing Signature Date
Total number of pages including cover sheet, attachments, and document: 18

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

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State of Delaware
Office of the Secretary of State

PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "EHITEX, INC.", CHANGING ITS NAME FROM "EHITEX, INC." TO "CONVERGE, INC.", FILED IN THIS OFFICE ON THE EIGHTEENTH DAY OF DECEMBER, A.D. 2000, AT 9 O'CLOCK A.M.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

3218228 8100

AUTHENTICATION: 0993304

010069967

DATE: 02-27-01

TRADEMARK

REEL: 002332 FRAME: 0186

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

eHITEX, Inc.

eHITEX, Inc., acting pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, hereby adopts the following Amended and Restated Certificate of Incorporation. The following Amended and Restated Certificate of Incorporation amends, restates, integrates, and supersedes, in its entirety, the original Certificate of Incorporation filed with the Delaware Secretary of State on April 26, 2000, as amended and restated on June 26, 2000.

ARTICLE 1.

1.1 The name of this corporation is Converge, Inc. (the "*Corporation*").

ARTICLE 2.

2.1 The registered agent and the address of the registered office in the State of Delaware is 1209 Orange Street, Wilmington, County of New Castle, Delaware, and the name of the registered agent in charge thereof is The Corporation Trust Company.

ARTICLE 3.

3.1 The purposes of the Corporation are: (a) to establish a business-to-business electronic and/or networked (e.g., Internet) marketplace and exchange (the "*High Tech Exchange*"), which shall be open and available on a non-discriminatory and non-exclusive basis to all participants, without limitation to or preferential treatment of any shareholder and that is intended (without limitation) to enable or facilitate and/or be a vehicle for the purchase and sale of computer and electronic parts, components and finished products by, and the provision of end-to-end supply chain operations management services, and other materials goods and services to, its participants, including computer original equipment manufacturers, other manufacturers, component suppliers, customers and distributors, and (b) to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law.

ARTICLE 4.

4.1 The Corporation is authorized to issue three classes of stock to be designated respectively Series A Preferred Stock ("*Preferred Stock*"), voting common stock ("*Voting Common Stock*") and non-voting common stock ("*Non-Voting Common Stock*"). The total number of shares of capital stock this Corporation is authorized to issue is One Hundred Forty Three Million One Hundred Eighty One Thousand Eight Hundred Twenty Five (143,181,825). The total number of shares of Preferred Stock this Corporation shall have authority to issue is

Forty Five Million (45,000,000), the total number of shares of Voting Common Stock this Corporation shall have authority to issue is Eighty One Million Eight Hundred Eighteen Thousand One Hundred Eighty Seven (81,818,187), and the total number of shares of Non-Voting Common Stock this Corporation shall have authority to issue is Sixteen Million Three Hundred Sixty Three Thousand Six Hundred Thirty Eight (16,363,638). The Preferred Stock shall have a par value of \$.001 per share. The Voting Common Stock and the Non-Voting Common Stock (jointly referred to herein as "*Common Stock*") each shall have a par value of \$.001 per share.

The powers, preferences, rights, restrictions, and other matters relating to the Common Stock and Preferred Stock are as follows:

(A) Dividends.

(i) The holders of the Preferred Stock and Common Stock shall be entitled to receive dividends if, and as, declared by the Board of Directors and such dividends shall be non-cumulative. Dividends shall be payable on the Preferred Stock on the basis of the number of shares of Common Stock into which each such share of Preferred Stock is then exercisable. The Board of Directors may, but is not required to, declare and pay dividends to the holders of Common Stock or the Preferred Stock; *provided, however*, no dividends may be paid to the holders of the Common Stock until an annual, non-cumulative Eight Percent (8%) dividend is paid to the holders of the Preferred Stock.

(B) Liquidation Preference.

(i) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Preferred Stock shall be entitled either:

(a) to receive prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock or any other series of preferred stock, the amount of \$2.2223 per share of Preferred Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares, the "*Original Issue Price*") multiplied by 1.5, plus all declared but unpaid dividends on such shares for each share of Preferred Stock then held by them, and the Preferred Stock shall be cancelled and returned to the Corporation. If upon the occurrence of such liquidation event, the assets and funds thus distributed among the holders of the Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive; or

(b) to convert their Preferred Stock into shares of Voting Common Stock, and after payment to the holders of any outstanding shares of Preferred Stock of the amount set forth in Section 4.1(B)(i)(a), to share, pro rata, together with all holders of Common Stock, in the remaining assets and funds of the Corporation legally available for distribution, if any.

(ii) For purposes of this Section, (a) any acquisition of the Corporation by means of merger or other form of corporate reorganization in which at least a majority of the outstanding shares of the Corporation are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary (other than a mere reincorporation transaction) or (b) a sale of all or substantially all of the assets of the Corporation, shall be treated as a liquidation, dissolution or winding up of the Corporation and shall entitle the holders of Preferred Stock and Common Stock to receive in cash, securities or other property (valued as provided in Section 4.1(B)(iii) hereof) amounts as specified in Section 4.1(B)(i) hereof.

(iii) Whenever the distribution provided for in this Section 4.1(B) shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined in good faith by the Board of Directors, or if such securities are publicly traded, based on the average closing price of such securities for the five days prior to the distribution.

(C) Voting Rights. Each holder of shares of the Preferred Stock shall be entitled to the number of votes equal to the number of shares of Voting Common Stock into which such shares of Preferred Stock could then be converted and shall have voting rights and powers equal to the voting rights and powers of the Voting Common Stock (except as otherwise expressly provided herein or as required by law, voting together with the Voting Common Stock as a single class) and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. In all cases, any fractional share, determined on an aggregate conversion basis, shall be rounded to the nearest whole share. Each holder of Voting Common Stock shall be entitled to one (1) vote for each share of Voting Common Stock held. Holders of Non-Voting Common Stock shall not be entitled to any votes for their shares of Non-Voting Common Stock held.

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

(i) Right To Convert. Subject to Section 4.1(E), each share of Preferred Stock (but not any share of Non-Voting Common Stock) shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for the Preferred Stock, into such number of fully paid and non-assessable shares of Voting Common Stock as is determined by dividing the Original Issue Price by the conversion price in effect on the date the certificate is surrendered for conversion. The initial conversion price per share for shares of Preferred Stock (the "Conversion Price") shall be the Original Issue Price, *provided, however*, that the Conversion Price for the Preferred Stock shall be subject to adjustment as set forth in subsection (E).

(ii) Automatic Conversion. Each share of Preferred Stock and each share of Non-Voting Common Stock shall automatically be converted into shares of Voting Common Stock at the Conversion Price then in effect at such time immediately upon the earlier of (a) the date specified by vote or written consent or agreement of holders of two-thirds (2/3) of the shares of the Preferred Stock then outstanding, or (b) immediately upon the closing of the sale of the Voting Common Stock in a firm commitment, underwritten public offering registered under the

Securities Act of 1933, as amended (the "*Securities Act*") (other than a registration relating solely to a transaction under Rule 145 under such Securities Act (or any successor thereto) or to an employee benefit plan of the Corporation) with gross proceeds to the Corporation of at least \$50,000,000 and a per share price of at least the Original Issue Price multiplied by Two (2) (the "*IPO*").

(iii) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled voluntarily to convert the same into shares of Voting Common Stock, it shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at such office that it elects to convert the same (except that no such written notice of election to convert shall be necessary in the event of an automatic conversion pursuant to Section 4.1(D)(ii) hereof) and shall state therein the number of shares to be converted and the name or names in which it wishes the certificate or certificates for shares of Voting 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, a certificate or certificates for the number of shares of Voting Common Stock to which he shall be entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Voting Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Voting Common Stock on such date.

If the conversion is in connection with an IPO, the conversion may, at the option of any holder tendering shares of Preferred Stock and/or Non-Voting Common Stock (as applicable) for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Voting Common Stock upon conversion of the Preferred Stock and/or Non-Voting Common Stock (as applicable) shall not be deemed to have converted such Preferred Stock and/or Non-Voting Common Stock (as applicable) until immediately prior to the closing of such sale of securities. Any such conversion shall be deemed to have been made at the close of business on the day written notice of such election has been received by the Corporation, and the person or persons entitled to receive shares of Voting Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Voting Common Stock on such date. Until certificates for such shares of the Preferred Stock and/or Non-Voting Common Stock (as applicable) which have been converted have been delivered to the Corporation for exchange for certificates representing such Voting Common Stock, such certificates shall be deemed to represent the shares of Voting Common Stock into which such Preferred Stock and/or Non-Voting Common Stock (as applicable) have been converted.

(E) Adjustments to Conversion Price for Certain Diluting Issues.

(i) Special Definitions. For purposes of this Section 4.1(E), the following definitions apply:

(a) "*Options*" shall mean rights, options, or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities (as hereinafter defined).

(b) "**Original Issue Date**" shall mean the date on which a share of Preferred Stock was first issued.

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

(d) "**Additional Shares of Common Stock**" shall mean all shares of Common Stock issued (or, pursuant to Section 4.1(E)(iii) hereof, deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(1) upon conversion of shares of Preferred Stock or Non-Voting Common Stock;

(2) up to Twelve Million Two Hundred Seventy Two Thousand Seven Hundred Thirty (12,272,730) shares of Voting Common Stock to employees, consultants, officers or directors pursuant to a stock option plan approved by the Board of Directors or an authorized committee thereof;

(3) warrants for up to Sixteen Million Three Hundred Sixty Three Thousand Six Hundred Thirty Eight (16,363,638) shares of Non-Voting Common Stock issued pursuant to a plan established for users of the High Tech Exchange;

(4) up to Eight Million One Hundred Eighty One Thousand Eight Hundred Nineteen (8,181,819) shares of Voting Common Stock to be issued by the Board in connection with strategic business alliances;

(5) as a dividend or distribution on Preferred Stock; or

(6) for which adjustment of the Conversion Price is made pursuant to Section 4.1(E)(vi).

(ii) **No Adjustment of Conversion Price.** Any provision herein to the contrary notwithstanding, no adjustment in the Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section 4.1(E)(v)) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to, such issue.

(iii) **Deemed Issue of Additional Shares of Common Stock.** In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then 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 designed to protect against dilution) of Common Stock issuable

upon the exercise of 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 in any such case in which Additional Shares of Common Stock are deemed to be issued:

(a) no further adjustments in the Conversion Price 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 Conversion Price 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 (*provided, however, that no such adjustment of the Conversion Price shall affect Common Stock previously issued upon conversion of the Preferred Stock*);

(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 Conversion Price 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:

(1) 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

(2) 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 4.1(E)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(d) no readjustment pursuant to Section 4.1(E)(iii)(b) or 4.1(E)(iii)(c) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (1) the Conversion Price on the original adjustment date, or (2) the Conversion Price 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 thirty (30) days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in Section 4.1(E)(iii)(c) above.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. If this Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4.1(E)(iii) hereof) without consideration or for a consideration per share less than the Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated as of the date of conversion on a fully diluted basis, as if all shares of Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock immediately prior to such issuance and any currently exercisable warrants, options or other rights for the purchase of shares of stock or convertible securities had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into shares of Common Stock, if so convertible), but not including in such calculation any additional shares of Common Stock issuable with respect to shares of Preferred Stock, Convertible Securities, or currently exercisable options, warrants or other rights for the purchase of shares of stock or convertible securities, solely as a result of the adjustment of the Conversion Price (or other conversion ratios) resulting from the issuance of Additional Shares of Common Stock causing such adjustment.

(v) Determination of Consideration. For purposes of this Section 4.1(E), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(a) Cash and Property. Such consideration shall:

(1) 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;

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

(3) 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 (1) and (2) above, as determined in good faith by the Board of Directors.

(b) 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 4.1(E)(iii) hereof, relating to Options and Convertible Securities shall be determined by dividing:

(1) 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 designed to protect against dilution) 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

(2) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against the dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

(vi) Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that this Corporation at any time or from time to time after the Original Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall 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 any right to acquire 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 of Common Stock,

then the Conversion Price in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that this Corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration, then the Corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

(vii) Adjustments for Reclassification and Reorganization. If the Voting Common Stock issuable upon conversion of the Preferred Stock and Non-Voting Common Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Section 4.1(E)(vi) hereof or a merger or other reorganization referred to in Section 4.1(B)(iii) hereof), the Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the Preferred Stock and Non-Voting Common Stock shall be convertible into, in lieu of the number of shares of Voting Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Voting Common Stock that would have been subject to receipt by the holders upon conversion of the Preferred Stock and Non-Voting Common Stock immediately before that change.

(viii) No Impairment. The Corporation will 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 the 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 4.1(E) and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock and Non-Voting Common Stock against impairment.

(ix) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4.1(E), the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Preferred Stock a certificate executed by the Corporation's President or Chief Financial Officer setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (a) such adjustments and readjustments, (b) the Conversion Price at the time in effect, and (c) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Preferred Stock.

(x) Issue Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Voting Common Stock on conversion of Preferred Stock and/or Non-Voting Common Stock (as applicable) pursuant

hereto; *provided, however*, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(xi) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Voting Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock and Non-Voting Common Stock, such number of its shares of Voting Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock and Non-Voting Common Stock; and if at any time the number of authorized but unissued shares of Voting Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock and Non-Voting Common Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Voting Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate.

(xii) Fractional Shares. No fractional share shall be issued upon the conversion of any share or shares of Preferred Stock or Non-Voting Common Stock. All shares of Voting Common Stock (including fractions thereof) issuable upon conversion of more than one share of Preferred Stock or Non-Voting Common Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Voting Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors).

(xiii) Notices. Any notice required by the provisions of this Section 4.1(E) to be given to the holders of shares of Preferred Stock and Non-Voting Common Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at its address appearing on the books of the Corporation.

(F) Restrictions and Limitations. So long as any shares of Preferred Stock remain outstanding:

(i) the Corporation shall not, without the vote or written consent by the holders of two thirds (2/3) of the then outstanding shares of the Preferred Stock:

(a) Make any fundamental change in the purpose or scope of the business of the Corporation as set forth in clause (a) of Section 3.1.

(b) Approve any merger or consolidation of the Corporation with any other person or entity which results in a change of control of the Corporation, or any other material sale, lease, license, assignment or other disposition for value of any of the Corporation's assets not in the ordinary course of the Corporation's business.

(c) Approve any amendment to Articles 3 and 4 of this Amended and Restated Certificate of Incorporation or any provision of the Bylaws relating to the qualification, election or number of Directors, or Sections 2 and 3 of the Bylaws.

(d) Subject to the second sentence of this paragraph (d), approve any issuance or sale of securities, other than (i) up to Twelve Million Two Hundred Seventy Two Thousand Seven Hundred Thirty (12,272,730) shares of Voting Common Stock or related options exercisable for such Common Stock, issued to employees, consultants, officers and directors of the Corporation pursuant to any plan or arrangement approved by the Board of Directors; (ii) up to Eight Million One Hundred Eighty One Thousand Eight Hundred Nineteen (8,181,819) shares of Voting Common Stock for use by the Board of Directors in connection with strategic business alliances; (iii) warrants for the issuance of up to Sixteen Million Three Hundred Sixty Three Thousand Six Hundred Thirty Eight (16,363,638) shares of Non-Voting Common Stock pursuant a plan established for users of the High Tech Exchange, and any securities issued pursuant to such warrants; (iv) securities issued in connection with any stock split, stock dividend, or recapitalization by the Corporation; and (v) shares of Voting Common Stock issued upon the conversion of the Preferred Stock and Non-Voting Common Stock. Notwithstanding anything to the contrary contained in the preceding sentence, the foregoing restrictions shall not apply solely if the purpose of approving the issuance or sale of securities is in connection with an IPO approved in accordance with the following Section 4.1(F)(i)(e).

(e) Approve an IPO of the Corporation prior to June 30, 2001; provided, however, that after June 30, 2001, approval of an IPO of the Corporation shall require only approval by holders of more than Fifty Percent (50%) of the Preferred Stock then outstanding.

(f) Approve any dissolution or liquidation of the Corporation.

(g) Authorize or issue any other equity security (including any security convertible into or exercisable for any equity security) senior or pari passu to the Preferred Stock as to dividends, redemption or liquidation preferences;

(h) Increase or decrease the aggregate number of authorized shares of Preferred Stock; or

(i) Alter or change the powers, preferences or special rights of the shares of Preferred Stock so as to affect them adversely.

(ii) Approval of action on the following reserved matters will require the approval of the Board of Directors, and may not be delegated to the officers of the Corporation:

(a) approval of the annual financial and operating plan of the Corporation and any material revisions or amendments thereto.

(b) any expenditure which, when added to all other expenditures covered by such financial and operating plan, would make the total expenditures exceed the budgeted amounts set forth in such plan by twenty percent (20%) or more.

(c) except as expressly authorized in the current financial and operating plan or authorized under delegated authority, any incurrence or guarantee of indebtedness or grant of any security interest in any of the Corporation's assets, involving in each case an amount in excess of Fifteen Percent (15%) of the Corporation's assets.

(d) any agreement, contract, commitment, undertaking or expenditure deemed an extraordinary matter as determined by the Board of Directors from time to time.

(e) surrendering or abandoning any property, tangible or intangible, or any rights thereunder, in each case, if such surrender or abandonment would have a material adverse effect on the Corporation.

(f) declarations of dividends.

(g) any determination to initiate or forego any material claim or litigation and any settlement, compromise or confession of judgment as to any material claim, controversy or litigation involving the Corporation as claimant or defendant.

(h) adoption or amendment of any employee benefit program or plan.

(i) approval of the final annual audited financial statements of the Corporation.

Board of Advisors. Each holder of Preferred Stock shall be entitled to appoint one individual to serve on the Board of Advisors of the Corporation.

No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

ARTICLE 5.

5.1 Subject to Section 4.1(F)(i)(c), the Corporation reserves the right to adopt, repeal, rescind or amend in any respect any provisions contained in this Amended and Restated Certificate of Incorporation in the manner now or hereafter prescribed by applicable law, and all rights conferred on stockholders herein are granted subject to this reservation.

ARTICLE 6.

6.1 To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as director.

(A) Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "*proceeding*"), by reason of the fact that he or she is or was a director, officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "*indemnitee*"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; *provided, however, that, except as provided in paragraph (C) hereof with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the board of directors of the Corporation.*

(B) Right to Advancement of Expenses. The right to indemnification conferred in paragraph (A) of this Section shall include the right to be paid by the Corporation the expenses incurred in defending any proceeding for which such right to indemnification is applicable in advance of its final disposition (hereinafter an "*advancement of expenses*"); *provided, however, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "*undertaking*"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "*final adjudication*") that such indemnitee is not entitled to be indemnified for such expenses under this Section or otherwise.*

(C) Right of Indemnitee to Bring Suit. The rights to indemnification and to the advancement of expenses conferred in paragraphs (A) and (B) of this Section shall be contract rights. If a claim under paragraph (A) or (B) of this Section is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be

twenty (20) days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (a) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (b) in any suit by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its board of directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its board of directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Section or otherwise shall be on the Corporation.

(D) Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, this Certificate of Incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

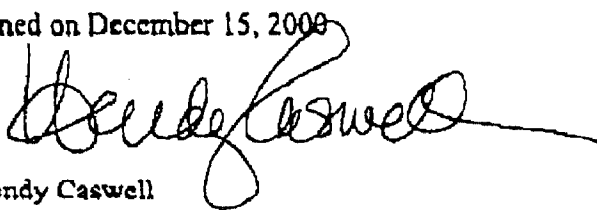
(E) Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

(F) Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the board of directors, grant rights to indemnification, and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Section with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

(G) Amendment. Neither any amendment nor repeal of this ARTICLE 6, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this ARTICLE 6, shall eliminate or reduce the effect of this ARTICLE 6 in respect of any matter occurring, or action or proceeding accruing or arising or that, but for this ARTICLE 6, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

The above Amended and Restated Certificate of Incorporation was adopted and approved by the Board of Directors and the stockholders of the Corporation on the 7th day of December, 2000, in the manner and by the vote prescribed by Sections 242 and Section 245 of the General Corporation Law of the State of Delaware.

Signed on December 15, 2000



Wendy Castwell
Vice President