

05-05-2003



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Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings

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

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

1. Name of conveying party(ies): Klocwork Solutions, Inc. 4-30-03
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: Klocwork, Inc. Internal Address: Street Address: One Chrysalis Way, 4th Floor City: Ottawa State: Ont. Zip: K2G6FG Individual(s) citizenship Canada 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: October 8, 2002

4. Application number(s) or registration number(s): A. Trademark Application No.(s) 76360589 B. Trademark Registration No.(s) N/A
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Stanton J. Lovenworth, Esq. Internal Address: Street Address: Dewey Ballantine LLP 1301 Avenue of the Americas City: New York State: NY Zip: 10019

6. Total number of applications and registrations involved: 1
7. Total fee (37 CFR 3.41): \$ 40.00 Enclosed Authorized to be charged to deposit account
8. Deposit account number: N/A 2003
(Attach duplicate copy of this page if paying by deposit account)

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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.

Stanton J. Lovenworth Name of Person Signing

[Signature] Signature

4/30/03 Date

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Total number of pages including cover sheet, attachments, and document: 39

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40.00 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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**Designation of Domestic Representative**

Assignee hereby designates Pequot Capital Management, Inc., 500 Nyala Farm Road, Westport, Connecticut 06880, Attn: Aryeh Davis, as its representative upon whom notice or process in proceedings affecting the mark may be served.

CERTIFICATE OF AMENDMENT OF  
CERTIFICATE OF INCORPORATION  
OF  
KLOCWORK SOLUTIONS INC.

KLOCwork Solutions Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY:

A. That the Corporation filed its original Certificate of Incorporation with the Secretary of State of Delaware on January 17, 2001 and amended and restated such Certificate of Incorporation on February 23, 2001.

B. That the Board of Directors of the Corporation by the unanimous written consent of its members, filed with the minutes of the Board, duly adopted, pursuant to Sections 141 and 242 of the General Corporation Law of the State of Delaware (the "GCL"), resolutions setting forth this proposed amendment to the Certificate of Incorporation of said Corporation and declaring said amendment to be advisable and directing that such amendment be presented to the shareholders of the Corporation for consideration and approval.

C. That at least a majority in interest of the stockholders of the Corporation voting on an as converted basis, a majority in interest of the holders of the Series A-1 Preferred Stock of the Corporation and a majority in interest of the Series A-2 Preferred Stock of the Corporation duly approved said proposed amendment in accordance with Section 242 of the GCL by executing a Waiver of Meeting of Shareholders and Majority Written Consent to Adoption of Resolutions in accordance with Section 228 of the GCL, and written notice of such consent has been given to all stockholders who have not consented in writing to said amendment.

D. The resolutions setting forth such amendment are as follows:

RESOLVED: That the Amended and Restated Certificate of Incorporation of the Corporation ("Certificate") shall be further amended as follows:

1. That the name of the Corporation is hereby changed to Klocwork, Inc.

2. That the first paragraph of Article Fourth of the Certificate is hereby amended to read in full as follows:

"FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 15,501,000 shares of Common

Stock, \$0.01 par value per share ("Common Stock"), and (ii) 12,056,000 shares of Preferred Stock, \$0.01 par value per share ("Preferred Stock"), of which 12,056,000 are designated as "Series A Convertible Participating Preferred Stock" (the "Series A Preferred Stock"). The Series A Preferred Stock is sometimes referred to as the "Preferred Stock.

The Corporation shall from time to time in accordance with the laws of the State of Delaware increase the authorized amount of its Common Stock if at any time the number of shares of Common Stock remaining unissued and available for issuance upon conversion of the Preferred Stock shall not be sufficient to permit conversion of the Preferred Stock.

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

**A. COMMON STOCK.**

1. **General.** The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock.
2. **Voting.** The holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting.

The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of Delaware.

3. **Dividends.** Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock.
4. **Liquidation.** Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential rights of any then outstanding Preferred Stock.

**B. PREFERRED STOCK.**

1. **Dividends.** The holders of shares of Preferred Stock shall be entitled to receive, out of funds legally available therefor, dividends when, as and if declared by the Board of Directors of the Corporation or as provided in

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Section 2 or Section 6 hereof. The right to receive dividends on Preferred Stock shall be non-cumulative, and such dividends, if and when paid, shall be paid, or set apart for payment, before any dividends on any other class or series of capital stock, including without limitation the Common Stock, are declared or paid or set apart for payment.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation (a "Liquidation Event"), and subject to paragraph (b) of this Section 2, the holders of shares of Preferred Stock then outstanding shall be entitled to be paid out of the assets and funds of the Corporation available for distribution to its stockholders, before any payment shall be made to the holders of Common Stock or any other class or series of stock ranking on liquidation junior to the Preferred Stock, by reason of their ownership thereof, an amount per share of Preferred Stock then outstanding equal to the greater of: (i) \$1.00 (the "Original Issue Price") (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), plus any dividends declared or accrued but unpaid thereon, or (ii) such amount per share as would have been payable had each such share been converted into Common Stock pursuant to Section 4 immediately prior to such Liquidation Event, regardless of whether such series of Preferred Stock has rights of voluntary conversion pursuant to the terms of Section 4. If, upon the occurrence of a Liquidation Event, the assets and funds of the Corporation legally available for distribution to stockholders by reason of their ownership of stock of the Corporation shall be insufficient to permit the payment to the holders of Preferred Stock of the full aforementioned preferential amount, then the entire assets and funds of the Corporation legally available for distribution to stockholders by reason of their ownership of stock of the Corporation shall be distributed among the holders of Series A Preferred Stock in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) After the payment of all preferential amounts required to be paid to the holders of Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation on a parity with the Preferred Stock, upon a Liquidation Event, the remaining assets and funds of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Series A Preferred Stock, Common Stock and any other class or series of stock entitled to participate in liquidation distributions with the holders of Common Stock, pro rata based on the number of shares of Common Stock held by each (assuming conversion into Common Stock of all such shares).

(c) Any (i) merger or consolidation in which (i) the Corporation is a constituent party or (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation (except any such merger or consolidation involving the Corporation or a subsidiary in

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which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold immediately following such merger or consolidation (in substantially the same percentages) at least 80% by voting power of the capital stock of (A) the surviving or resulting corporation or (B) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation), (2) sale or other disposition of all or substantially all the assets of the Corporation or (3) transaction or a series of related transactions in which a person or group of persons (as defined in Rule 13d-5(b)(1) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") acquires beneficial ownership (as determined in accordance with Rule 13d-3 of the Exchange Act) of more than 50% of the voting power of the Corporation, shall be deemed to be a Liquidation Event for purposes of this Section 2, and the agreement or plan of merger or consolidation with respect to such merger, consolidation or sale shall provide that the consideration payable to the stockholders of the Corporation (in the case of a merger or consolidation), or consideration payable to the Corporation, together with all other available assets of the Corporation (in the case of an asset sale), shall be distributed to the holders of capital stock of the Corporation in accordance with paragraphs (a) through (d) of this Section 2. The amount deemed distributed to the holders of Preferred Stock upon any such merger, consolidation or sale shall be the cash or the value of the property, rights or securities distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or other securities shall be determined in good faith by the Board of Directors of the Corporation.

(d) The Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction as promptly as practicable, but in any event no later than 15 days prior to the stockholders' meeting called to approve such transaction, or 15 days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than 15 days after the Corporation has given the first notice provided for in this Subsection 2(d) or sooner than 10 days after the Corporation has given notice of any material changes provided for in this Subsection 2(d); provided, however, that such periods may be shortened upon the written consent of the holders of at least a majority of the Preferred Stock that are entitled to such notice rights or similar notice rights consenting or voting (as the case may be), as a separate series.

### 3. Voting.

(a) On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written action of stockholders in lieu of meeting), each holder of outstanding shares of Series A Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock held by such holder are convertible (as adjusted from time to time pursuant to Section 4 hereof)

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as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law, by the provisions of Subsection 3(b) or 3(c) below or by the provisions establishing any other series of Preferred Stock, holders of Series A Preferred Stock shall vote together with the holders of Common Stock as a single class.

(b) The Corporation shall not, (1) so long as at least 50% of the original number of shares of the Series A Preferred Stock remains outstanding, subject to appropriate adjustments in the event of any stock dividends, stock split, combination or other similar reorganization affecting such shares, without first obtaining the affirmative vote or written consent of at least 66 2/3% of the then outstanding shares of each such series of Preferred Stock, given by written consent or by vote at a meeting, consenting or voting (as the case may be), as a separate series:

(i) amend, alter or repeal the preferences, special rights or other powers of any series of Preferred Stock;

(ii) authorize any shares of capital stock or securities convertible into shares of capital stock of the Corporation with preference or priority over, or on parity with, any series of Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation, or with respect to voting rights, rights regarding redemption or otherwise;

(iii) increase or decrease the authorized number of shares of common stock or preferred stock; or

(iv) enter into any merger or consolidation, any other corporate reorganization, any other transaction as a result of which holders of capital stock of the Corporation immediately prior to such transaction shall hold immediately after the consummation of such transaction, less than 80% of the voting power of the Corporation (or surviving or acquired corporation), enter into a partnership or joint venture with, or establish an alliance with any other entity, or permit any subsidiary to enter into any merger or consolidation, or enter into a partnership or joint venture with, or establish an alliance with any other entity or enter into any sale of all or substantially all of the assets of the corporation in which, in any of the scenarios set forth in this clause (iv), all or substantially all of the assets of the Corporation are transferred for an effective aggregate price to the stockholders of the Corporation of less than \$30,000,000; and

(2) so long as any shares of Series A Preferred Stock remain outstanding, without first obtaining the affirmative vote or written consent of a majority of the then outstanding shares of Series A Preferred Stock, given by written consent or by vote at a meeting, consenting or voting (as the case may be), (i) amend, alter or repeal the preferences, special rights or other powers of Series A Preferred Stock, or (ii) authorize any shares of capital stock or securities convertible into shares of capital stock of the Corporation with preference or priority over, or on parity with, the Series A Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation,

dissolution or winding up of the Corporation, or with respect to voting rights, rights regarding redemption or otherwise; and

(c) In addition to any other rights provided by law, so long as at least 50% of the original number of shares of the Series A Preferred Stock remains outstanding, subject to appropriate adjustments in the event of any stock dividend, stock split, combination or other similar reorganization affecting such shares, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least 66 2/3% of the then outstanding shares of the Series A Preferred Stock:

(i) declare or pay any dividends or distributions on any shares of its capital stock (except dividends payable solely in shares of capital stock), or apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any shares of its capital stock (other than the repurchase of Common Stock from employees, directors or consultants at cost upon termination of their employment or service pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation or pursuant to Section 6 hereof);

(ii) acquire, in any one transaction or a series of related transactions, all or substantially all of the properties, assets or capital stock of any other corporation or entity (except for consideration of less \$10,000,000);

(iii) increase or decrease the authorized number of directors of the Corporation;

(iv) incur any indebtedness for borrowed funds, in the aggregate principal amount at any time outstanding, greater than \$5,000,000;

(v) engage in a Liquidation Event; or

(vi) sell, transfer or dispose of any patents or other intellectual property of the Corporation, other than in the ordinary course of business.

4. Optional Conversion. The holders of the Series A Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price by the applicable Conversion Price (as defined below) in effect at the time of conversion. The "Conversion Price" shall initially be \$1.00 in the case of Series A Preferred Stock (the "Conversion Price"). Such initial Conversion Price, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

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In the event of a Liquidation Event of the Corporation, the Conversion Rights shall terminate at the close of business on the first full day preceding the date fixed for the payment of any amounts distributable on liquidation to the holders of Preferred Stock.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective applicable Conversion Price.

(c) Mechanics of Conversion.

(i) In order for a holder of Series A Preferred Stock to convert shares of Series A Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock, at the office of the transfer agent for the Series A Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Series A Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of Series A Preferred Stock, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share. If any such conversion is made in connection with a public offering of securities, or a merger, consolidation, sale of assets or other Liquidation Event, such conversion may be made contingent on, and shall be effective only at the closing of, such transaction.

(ii) The Corporation shall at all times when the Series A Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Series A Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Stock. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

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(iii) Upon any such conversion, no adjustment to the Conversion Price for the Series A Preferred Stock shall be made for any declared but unpaid dividends on the Series A Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion. Any declared, but unpaid, dividends on a share of Series A Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion shall be promptly paid pursuant to paragraph (iv) below to the holders surrendering such shares for conversion.

(iv) All shares of Series A Preferred Stock which shall have been surrendered for conversion as provided in this Subsection 4(c) shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any dividends declared but unpaid thereon. Any shares of Series A Preferred Stock so converted shall be retired and cancelled and shall not be reissued, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of the applicable series of Series A Preferred Stock accordingly.

(v) The Corporation shall pay any and all issue, documentary, stamp and other transactional taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4 and Sections 5 and 6 hereof. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted are then registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Conversion Price for Diluting Issues:

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

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

(B) "Original Issue Date" shall mean the date on which a share Series A Preferred Stock was first issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

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(D) **"Additional Shares of Common Stock"** shall mean all shares of Common Stock issued (or, pursuant to Subsection 4(d)(iii) below, deemed to be issued) by the Corporation after the applicable Original Issue Date, other than:

- (I) shares of Common Stock issued or issuable upon conversion or exchange of any Convertible Securities or exercise of any Options outstanding on such Original Issue Date;
- (II) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock;
- (III) shares of Common Stock issued or issuable by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4(e) or 4(f) below;
- (IV) shares of Common Stock (or Options with respect thereto) issued or issuable to employees or directors of, or consultants or advisors to, the Corporation pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation; or
- (V) shares of Common Stock (or Options with respect thereto) issued or issuable to banks, equipment lessors, creditors, landlords, suppliers or customers of the Corporation, or in connection with acquisitions, joint ventures or strategic transactions, or pursuant to other plans, agreements or arrangements approved by the Board of Directors of the Corporation.

(ii) **No Adjustment of Conversion Price.** No adjustment in the applicable Conversion Price shall be made as the result of the issuance of Additional Shares of Common Stock if: (a) the consideration per share (determined pursuant to Subsection 4(d)(v)) for such Additional Share of Common Stock issued or deemed to be issued by the Corporation is equal to or greater than the applicable Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares, or (b) prior to such issuance or deemed issuance, the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of each of the Series Preferred Stock, agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock.

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(iii) Issue of Securities Deemed Issue of Additional Shares of Common Stock. If the Corporation at any time or from time to time after the applicable 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 entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) 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 Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Subsection 4(d)(v) hereof) of such Additional Shares of Common Stock would be less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) No further adjustment in the 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, then upon the exercise, conversion or exchange thereof, the applicable 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;

(C) Upon the expiration or termination of any such unexercised Option or unconverted Convertible Security, the Conversion Price shall not be readjusted, but the Additional Shares of Common Stock deemed issued as the result of the original issue of such Option or Convertible Security shall not be deemed issued for the purposes of any subsequent adjustment of the Conversion Price;

(D) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security, including, but not limited to, a change resulting from the anti-dilution provisions thereof, the Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment which was made upon the issuance of such Option or Convertible Security not exercised, converted or exchanged prior to such change been made upon the basis of such change; and

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(E) No readjustment pursuant to clause (B) or (D) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

In the event the Corporation, after the applicable Original Issue Date, amends the terms of any such Options or Convertible Securities (whether such Options or Convertible Securities were outstanding on such Original Issue Date or were issued after such Original Issue Date), then such Options or Convertible Securities, as so amended, shall be deemed to have been issued after such Original Issue Date and the provisions of this Subsection 4(d)(iii) shall apply.

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

In the event the Corporation shall at any time after the applicable Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4(d)(iii)), without consideration or for a consideration per share less than the applicable Conversion Price in effect immediately prior to such issue, then and in such event, such 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, (A) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue plus (2) the number of shares of Common Stock which the aggregate consideration received or to be received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price; and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; provided that, (i) for the purpose of this Subsection 4(d)(iv), all shares of Common Stock issuable upon exercise, conversion or exchange of Options or Convertible Securities outstanding immediately prior to such issue shall be deemed to be outstanding, and (ii) the number of shares of Common Stock deemed issuable upon exercise, conversion or exchange of such outstanding Options and Convertible Securities shall not give effect to any adjustments to the exercise, conversion or exchange price or exercise, conversion or exchange rate of such Options or Convertible Securities resulting from the issuance of Additional Shares of Common Stock that is the subject of this calculation.

(v) Determination of Consideration. For purposes of this Subsection 4(d), 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:

(I) insofar as it consists of cash, be computed at the aggregate of cash received by the

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Corporation, excluding amounts paid or payable for accrued interest;

- (II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and
- (III) 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 (I) and (II) 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 Subsection 4(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing

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

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

(vi) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock which consist of shares of the same series or class of Preferred Stock, and such issuance dates occur within a period of no more than 120 days, then, upon the final such issuance, the applicable Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the final such issuance (and without giving effect to any adjustments as a result of such prior issuances within such period).

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(e) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the applicable Original Issue Date effect a subdivision of the outstanding Common Stock, the applicable Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time or from time to time after the applicable Original Issue Date combine the outstanding shares of Common Stock, the applicable Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time, or from time to time after the applicable Original Issue Date shall make or issue, or fix 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, then and in each such event the applicable Conversion Price then in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price then in effect by a fraction:

(1) the numerator of which shall be 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 shall be 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, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive (i) a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Preferred Stock which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

(g) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the applicable Original Issue Date

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shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of other persons or the securities of the Corporation (other than shares of Common Stock) or in cash or other property (other than cash out of earnings or earned surplus, determined in accordance with generally accepted accounting principles), then and in each such event provision shall be made so that the holders of the Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the kind and amount of securities of other persons or the securities of the Corporation, cash or other property which they would have been entitled to receive had the Preferred Stock 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, giving application to all adjustments called for during such period under this paragraph with respect to the rights of the holders of the Preferred Stock; provided, however, that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive a dividend or other distribution of such securities in an amount equal to the amount of such securities, cash or other property as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

(h) Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 2, if there shall occur any reorganization, recapitalization, consolidation or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by paragraphs (e), (f) or (g) of this Section 4), then, following any such reorganization, recapitalization, consolidation or merger, each share of Preferred Stock shall be convertible into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Preferred Stock immediately prior to such reorganization, recapitalization, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interest thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the applicable Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Preferred Stock.

(i) 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 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

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(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a certificate setting forth (i) the Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Preferred Stock.

(k) Notice of Record Date. In the event:

(i) the Corporation shall take a record of the holders of its Common Stock (or other stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(ii) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, any consolidation or merger of the Corporation with or into another corporation (other than a consolidation or merger in which the Corporation is the surviving entity and its Common Stock is not converted into or exchanged for any other securities or property), or any transfer of all or substantially all of the assets of the Corporation; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will mail or cause to be mailed to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up. Such notice shall be mailed at least 10 days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion.

(a) Upon the closing of the Qualified Initial Public Offering, as defined below (the date of which is referred to as the "Mandatory Conversion Date"):

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(i) all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Conversion Price and (ii) the number of authorized shares of Preferred Stock shall be automatically reduced by the number of shares of Preferred Stock that had been designated as Series A Preferred Stock, and all provisions included under the caption "Preferred Stock," and all references to the Preferred Stock and Series A Preferred Stock shall be deleted and shall be of no further force or effect, except that all declared and unpaid dividends on Preferred Stock shall become immediately payable by the Corporation to the holders of such shares outstanding immediately prior to such Mandatory Conversion Date. "Qualified Initial Public Offering" means the sale of shares of Common Stock in the initial firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, in which (i) the initial public offering price per share times the number of shares of Common Stock issued and outstanding before giving effect to shares proposed to be sold pursuant to the Registration Statement equals or exceeds \$100,000,000, (ii) the proceeds, before expenses, to the Company are at least \$30,000,000 and (iii) the managing underwriters have been approved by a majority of the Board of Directors.

(b) Without limiting the foregoing, upon the affirmative vote or written consent of at least a majority of the Series A Preferred Stock approving a mandatory conversion of all shares of Series A Preferred Stock and setting forth a Mandatory Conversion Date, (also a "Mandatory Conversion Date"), (i) all outstanding shares of Series A Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Conversion Price and (ii) the number of authorized shares of Preferred Stock shall be automatically reduced by the number of shares of Preferred Stock that had been designated as Series A Preferred Stock and all provisions included under the name of Series A Preferred Stock, and all references to such series of Preferred Stock shall be deleted and shall be of no further force or effect, except that all declared and unpaid dividends on Preferred Stock shall become immediately payable by the Corporation to the holders of such shares outstanding immediately prior to such Mandatory Conversion Date.

(c) All holders of record of shares of Preferred Stock shall be given written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 5. Such notice need not be given in advance of the occurrence of the Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid, to each record holder of Preferred Stock at such holder's address last shown on the records of the transfer agent for the Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent). Upon receipt of such notice, each holder of shares of Preferred Stock shall surrender his or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 5. On the Mandatory Conversion Date, all outstanding shares of Preferred Stock shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a

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**CORRECTED CERTIFICATE**

**OF**

**KLOCWORK, INC.**

It is hereby certified that:

1. The name of the corporation (hereinafter called the "corporation") is **KLOCWORK, INC.**
2. The Certificate of Amendment of the corporation, which was filed by the Secretary of State of Delaware on October 8, 2002, is hereby corrected.
3. The new name of the corporation incorrectly contained a comma. This correction is being filed to remove such comma.
4. The Corrected Certificate is set forth in its entirety and is attached as Exhibit A.

DE BC D-CERTIFICATE OF CORRECTION 01/98 (#1277)

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**CERTIFICATE OF AMENDMENT OF  
CERTIFICATE OF INCORPORATION  
OF  
KLOCWORK SOLUTIONS, INC.**

KLOCwork Solutions, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY:

A. That the Corporation filed its original Certificate of Incorporation with the Secretary of State of Delaware on January 17, 2001 and amended and restated such Certificate of Incorporation on February 23, 2001.

B. That the Board of Directors of the Corporation by the unanimous written consent of its members, filed with the minutes of the Board, duly adopted, pursuant to Sections 141 and 242 of the General Corporation Law of the State of Delaware (the "GCL"), resolutions setting forth this proposed amendment to the Certificate of Incorporation of said Corporation and declaring said amendment to be advisable and directing that such amendment be presented to the shareholders of the Corporation for consideration and approval.

C. That at least a majority in interest of the stockholders of the Corporation voting on an as converted basis, a majority in interest of the holders of the Series A-1 Preferred Stock of the Corporation and a majority in interest of the Series A-2 Preferred Stock of the Corporation duly approved said proposed amendment in accordance with Section 242 of the GCL by executing a Waiver of Meeting of Shareholders and Majority Written Consent to Adoption of Resolutions in accordance with Section 228 of the GCL, and written notice of such consent has been given to all stockholders who have not consented in writing to said amendment.

D. The resolutions setting forth such amendment are as follows:

**RESOLVED:** That the Amended and Restated Certificate of Incorporation of the Corporation ("Certificate") shall be further amended as follows:

1. That the name of the Corporation is hereby changed to Klocwork Inc.
2. That the first paragraph of Article Fourth of the Certificate is hereby amended to read in full as follows:

"FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 15,501,000 shares of Common

Stock, \$0.01 par value per share ("Common Stock"), and (ii) 12,056,000 shares of Preferred Stock, \$0.01 par value per share ("Preferred Stock"), of which 12,056,000 are designated as "Series A Convertible Participating Preferred Stock" (the "Series A Preferred Stock"). The Series A Preferred Stock is sometimes referred to as the "Preferred Stock."

The Corporation shall from time to time in accordance with the laws of the State of Delaware increase the authorized amount of its Common Stock if at any time the number of shares of Common Stock remaining unissued and available for issuance upon conversion of the Preferred Stock shall not be sufficient to permit conversion of the Preferred Stock.

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

**A. COMMON STOCK.**

1. **General.** The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock.
2. **Voting.** The holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting.

The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of Delaware.

3. **Dividends.** Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock.
4. **Liquidation.** Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential rights of any then outstanding Preferred Stock.

**B. PREFERRED STOCK.**

1. **Dividends.** The holders of shares of Preferred Stock shall be entitled to receive, out of funds legally available therefor, dividends when, as and if declared by the Board of Directors of the Corporation or as provided in

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Section 2 or Section 6 hereof. The right to receive dividends on Preferred Stock shall be non-cumulative, and such dividends, if and when paid, shall be paid, or set apart for payment, before any dividends on any other class or series of capital stock, including without limitation the Common Stock, are declared or paid or set apart for payment.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation (a "Liquidation Event"), and subject to paragraph (b) of this Section 2, the holders of shares of Preferred Stock then outstanding shall be entitled to be paid out of the assets and funds of the Corporation available for distribution to its stockholders, before any payment shall be made to the holders of Common Stock or any other class or series of stock ranking on liquidation junior to the Preferred Stock, by reason of their ownership thereof, an amount per share of Preferred Stock then outstanding equal to the greater of: (i) \$1.00 (the "Original Issue Price") (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), plus any dividends declared or accrued but unpaid thereon, or (ii) such amount per share as would have been payable had each such share been converted into Common Stock pursuant to Section 4 immediately prior to such Liquidation Event, regardless of whether such series of Preferred Stock has rights of voluntary conversion pursuant to the terms of Section 4. If, upon the occurrence of a Liquidation Event, the assets and funds of the Corporation legally available for distribution to stockholders by reason of their ownership of stock of the Corporation shall be insufficient to permit the payment to the holders of Preferred Stock of the full aforementioned preferential amount, then the entire assets and funds of the Corporation legally available for distribution to stockholders by reason of their ownership of stock of the Corporation shall be distributed among the holders of Series A Preferred Stock in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) After the payment of all preferential amounts required to be paid to the holders of Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation on a parity with the Preferred Stock, upon a Liquidation Event, the remaining assets and funds of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Series A Preferred Stock, Common Stock and any other class or series of stock entitled to participate in liquidation distributions with the holders of Common Stock, pro rata based on the number of shares of Common Stock held by each (assuming conversion into Common Stock of all such shares).

(c) Any (1) merger or consolidation in which (i) the Corporation is a constituent party or (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation (except any such merger or consolidation involving the Corporation or a subsidiary in

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which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold immediately following such merger or consolidation (in substantially the same percentages) at least 80% by voting power of the capital stock of (A) the surviving or resulting corporation or (B) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation), (2) sale or other disposition of all or substantially all the assets of the Corporation or (3) transaction or a series of related transactions in which a person or group of persons (as defined in Rule 13d-5(b)(1) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") acquires beneficial ownership (as determined in accordance with Rule 13d-3 of the Exchange Act) of more than 50% of the voting power of the Corporation, shall be deemed to be a Liquidation Event for purposes of this Section 2, and the agreement or plan of merger or consolidation with respect to such merger, consolidation or sale shall provide that the consideration payable to the stockholders of the Corporation (in the case of a merger or consolidation), or consideration payable to the Corporation, together with all other available assets of the Corporation (in the case of an asset sale), shall be distributed to the holders of capital stock of the Corporation in accordance with paragraphs (a) through (d) of this Section 2. The amount deemed distributed to the holders of Preferred Stock upon any such merger, consolidation or sale shall be the cash or the value of the property, rights or securities distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or other securities shall be determined in good faith by the Board of Directors of the Corporation.

(d) The Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction as promptly as practicable, but in any event no later than 15 days prior to the stockholders' meeting called to approve such transaction, or 15 days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than 15 days after the Corporation has given the first notice provided for in this Subsection 2(d) or sooner than 10 days after the Corporation has given notice of any material changes provided for in this Subsection 2(d); provided, however, that such periods may be shortened upon the written consent of the holders of at least a majority of the Preferred Stock that are entitled to such notice rights or similar notice rights consenting or voting (as the case may be), as a separate series.

### 3. Voting.

(a) On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written action of stockholders in lieu of meeting), each holder of outstanding shares of Series A Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock held by such holder are convertible (as adjusted from time to time pursuant to Section 4 hereof)

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as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law, by the provisions of Subsection 3(b) or 3(c) below or by the provisions establishing any other series of Preferred Stock, holders of Series A Preferred Stock shall vote together with the holders of Common Stock as a single class.

(b) The Corporation shall not, (1) so long as at least 50% of the original number of shares of the Series A Preferred Stock remains outstanding, subject to appropriate adjustments in the event of any stock dividends, stock split, combination or other similar reorganization affecting such shares, without first obtaining the affirmative vote or written consent of at least 66 2/3% of the then outstanding shares of each such series of Preferred Stock, given by written consent or by vote at a meeting, consenting or voting (as the case may be), as a separate series:

(i) amend, alter or repeal the preferences, special rights or other powers of any series of Preferred Stock;

(ii) authorize any shares of capital stock or securities convertible into shares of capital stock of the Corporation with preference or priority over, or on parity with, any series of Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation, or with respect to voting rights, rights regarding redemption or otherwise;

(iii) increase or decrease the authorized number of shares of common stock or preferred stock; or

(iv) enter into any merger or consolidation, any other corporate reorganization, any other transaction as a result of which holders of capital stock of the Corporation immediately prior to such transaction shall hold immediately after the consummation of such transaction, less than 80% of the voting power of the Corporation (or surviving or acquired corporation), enter into a partnership or joint venture with, or establish an alliance with any other entity, or permit any subsidiary to enter into any merger or consolidation, or enter into a partnership or joint venture with, or establish an alliance with any other entity or enter into any sale of all or substantially all of the assets of the corporation in which, in any of the scenarios set forth in this clause (iv), all or substantially all of the assets of the Corporation are transferred for an effective aggregate price to the stockholders of the Corporation of less than \$30,000,000; and

(2) so long as any shares of Series A Preferred Stock remain outstanding, without first obtaining the affirmative vote or written consent of a majority of the then outstanding shares of Series A Preferred Stock, given by written consent or by vote at a meeting, consenting or voting (as the case may be), (i) amend, alter or repeal the preferences, special rights or other powers of Series A Preferred Stock, or (ii) authorize any shares of capital stock or securities convertible into shares of capital stock of the Corporation with preference or priority over, or on parity with, the Series A Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation,

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dissolution or winding up of the Corporation, or with respect to voting rights, rights regarding redemption or otherwise; and

(c) In addition to any other rights provided by law, so long as at least 50% of the original number of shares of the Series A Preferred Stock remains outstanding, subject to appropriate adjustments in the event of any stock dividend, stock split, combination or other similar reorganization affecting such shares, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least 66 2/3% of the then outstanding shares of the Series A Preferred Stock:

(i) declare or pay any dividends or distributions on any shares of its capital stock (except dividends payable solely in shares of capital stock), or apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any shares of its capital stock (other than the repurchase of Common Stock from employees, directors or consultants at cost upon termination of their employment or service pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation or pursuant to Section 6 hereof);

(ii) acquire, in any one transaction or a series of related transactions, all or substantially all of the properties, assets or capital stock of any other corporation or entity (except for consideration of less \$10,000,000);

(iii) increase or decrease the authorized number of directors of the Corporation;

(iv) incur any indebtedness for borrowed funds, in the aggregate principal amount at any time outstanding, greater than \$5,000,000;

(v) engage in a Liquidation Event; or

(vi) sell, transfer or dispose of any patents or other intellectual property of the Corporation, other than in the ordinary course of business.

4. **Optional Conversion.** The holders of the Series A Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) **Right to Convert.** Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price by the applicable Conversion Price (as defined below) in effect at the time of conversion. The "Conversion Price" shall initially be \$1.00 in the case of Series A Preferred Stock (the "Conversion Price"). Such initial Conversion Price, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

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In the event of a Liquidation Event of the Corporation, the Conversion Rights shall terminate at the close of business on the first full day preceding the date fixed for the payment of any amounts distributable on liquidation to the holders of Preferred Stock.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective applicable Conversion Price.

(c) Mechanics of Conversion.

(i) In order for a holder of Series A Preferred Stock to convert shares of Series A Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock, at the office of the transfer agent for the Series A Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Series A Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of Series A Preferred Stock, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share. If any such conversion is made in connection with a public offering of securities, or a merger, consolidation, sale of assets or other Liquidation Event, such conversion may be made contingent on, and shall be effective only at the closing of, such transaction.

(ii) The Corporation shall at all times when the Series A Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Series A Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Stock. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

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(iii) Upon any such conversion, no adjustment to the Conversion Price for the Series A Preferred Stock shall be made for any declared but unpaid dividends on the Series A Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion. Any declared, but unpaid, dividends on a share of Series A Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion shall be promptly paid pursuant to paragraph (iv) below to the holders surrendering such shares for conversion.

(iv) All shares of Series A Preferred Stock which shall have been surrendered for conversion as provided in this Subsection 4(c) shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any dividends declared but unpaid thereon. Any shares of Series A Preferred Stock so converted shall be retired and cancelled and shall not be reissued, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of the applicable series of Series A Preferred Stock accordingly.

(v) The Corporation shall pay any and all issue, documentary, stamp and other transactional taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4 and Sections 5 and 6 hereof. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted are then registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Conversion Price for Diluting Issues:

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

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

(B) "Original Issue Date" shall mean the date on which a share Series A Preferred Stock was first issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

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(D) **"Additional Shares of Common Stock"** shall mean all shares of Common Stock issued (or, pursuant to Subsection 4(d)(iii) below, deemed to be issued) by the Corporation after the applicable Original Issue Date, other than:

- (I) shares of Common Stock issued or issuable upon conversion or exchange of any Convertible Securities or exercise of any Options outstanding on such Original Issue Date;
- (II) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock;
- (III) shares of Common Stock issued or issuable by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4(e) or 4(f) below;
- (IV) shares of Common Stock (or Options with respect thereto) issued or issuable to employees or directors of, or consultants or advisors to, the Corporation pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation; or
- (V) shares of Common Stock (or Options with respect thereto) issued or issuable to banks, equipment lessors, creditors, landlords, suppliers or customers of the Corporation, or in connection with acquisitions, joint ventures or strategic transactions, or pursuant to other plans, agreements or arrangements approved by the Board of Directors of the Corporation.

(ii) **No Adjustment of Conversion Price.** No adjustment in the applicable Conversion Price shall be made as the result of the issuance of Additional Shares of Common Stock if: (a) the consideration per share (determined pursuant to Subsection 4(d)(v)) for such Additional Share of Common Stock issued or deemed to be issued by the Corporation is equal to or greater than the applicable Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares, or (b) prior to such issuance or deemed issuance, the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of each of the Series Preferred Stock, agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock.

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(iii) Issue of Securities Deemed Issue of Additional Shares of Common Stock. If the Corporation at any time or from time to time after the applicable 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 entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) 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 Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Subsection 4(d)(v) hereof) of such Additional Shares of Common Stock would be less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) No further adjustment in the 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, then upon the exercise, conversion or exchange thereof, the applicable 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;

(C) Upon the expiration or termination of any such unexercised Option or unconverted Convertible Security, the Conversion Price shall not be readjusted, but the Additional Shares of Common Stock deemed issued as the result of the original issue of such Option or Convertible Security shall not be deemed issued for the purposes of any subsequent adjustment of the Conversion Price;

(D) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security, including, but not limited to, a change resulting from the anti-dilution provisions thereof, the Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment which was made upon the issuance of such Option or Convertible Security not exercised, converted or exchanged prior to such change been made upon the basis of such change; and

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(E) No readjustment pursuant to clause (B) or (D) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

In the event the Corporation, after the applicable Original Issue Date, amends the terms of any such Options or Convertible Securities (whether such Options or Convertible Securities were outstanding on such Original Issue Date or were issued after such Original Issue Date), then such Options or Convertible Securities, as so amended, shall be deemed to have been issued after such Original Issue Date and the provisions of this Subsection 4(d)(iii) shall apply.

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

In the event the Corporation shall at any time after the applicable Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4(d)(iii)), without consideration or for a consideration per share less than the applicable Conversion Price in effect immediately prior to such issue, then and in such event, such 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, (A) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue plus (2) the number of shares of Common Stock which the aggregate consideration received or to be received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price; and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; provided that, (i) for the purpose of this Subsection 4(d)(iv), all shares of Common Stock issuable upon exercise, conversion or exchange of Options or Convertible Securities outstanding immediately prior to such issue shall be deemed to be outstanding, and (ii) the number of shares of Common Stock deemed issuable upon exercise, conversion or exchange of such outstanding Options and Convertible Securities shall not give effect to any adjustments to the exercise, conversion or exchange price or exercise, conversion or exchange rate of such Options or Convertible Securities resulting from the issuance of Additional Shares of Common Stock that is the subject of this calculation.

(v) Determination of Consideration. For purposes of this Subsection 4(d), 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:

(I) insofar as it consists of cash, be computed at the aggregate of cash received by the

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Corporation, excluding amounts paid or payable for accrued interest;

- (II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and
- (III) 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 (I) and (II) 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 Subsection 4(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing

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

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

(vi) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock which consist of shares of the same series or class of Preferred Stock, and such issuance dates occur within a period of no more than 120 days, then, upon the final such issuance, the applicable Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the final such issuance (and without giving effect to any adjustments as a result of such prior issuances within such period).

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(e) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the applicable Original Issue Date effect a subdivision of the outstanding Common Stock, the applicable Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time or from time to time after the applicable Original Issue Date combine the outstanding shares of Common Stock, the applicable Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time, or from time to time after the applicable Original Issue Date shall make or issue, or fix 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, then and in each such event the applicable Conversion Price then in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price then in effect by a fraction:

(1) the numerator of which shall be 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 shall be 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, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive (i) a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Preferred Stock which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

(g) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the applicable Original Issue Date

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shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of other persons or the securities of the Corporation (other than shares of Common Stock) or in cash or other property (other than cash out of earnings or earned surplus, determined in accordance with generally accepted accounting principles), then and in each such event provision shall be made so that the holders of the Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the kind and amount of securities of other persons or the securities of the Corporation, cash or other property which they would have been entitled to receive had the Preferred Stock 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, giving application to all adjustments called for during such period under this paragraph with respect to the rights of the holders of the Preferred Stock; provided, however, that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive a dividend or other distribution of such securities in an amount equal to the amount of such securities, cash or other property as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

(h) Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 2, if there shall occur any reorganization, recapitalization, consolidation or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by paragraphs (e), (f) or (g) of this Section 4), then, following any such reorganization, recapitalization, consolidation or merger, each share of Preferred Stock shall be convertible into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Preferred Stock immediately prior to such reorganization, recapitalization, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interest thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the applicable Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Preferred Stock.

(i) 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 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

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(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a certificate setting forth (i) the Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Preferred Stock.

(k) Notice of Record Date. In the event:

(i) the Corporation shall take a record of the holders of its Common Stock (or other stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(ii) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, any consolidation or merger of the Corporation with or into another corporation (other than a consolidation or merger in which the Corporation is the surviving entity and its Common Stock is not converted into or exchanged for any other securities or property), or any transfer of all or substantially all of the assets of the Corporation; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will mail or cause to be mailed to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up. Such notice shall be mailed at least 10 days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion.

(a) Upon the closing of the Qualified Initial Public Offering, as defined below (the date of which is referred to as the "Mandatory Conversion Date"):

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(i) all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Conversion Price and (ii) the number of authorized shares of Preferred Stock shall be automatically reduced by the number of shares of Preferred Stock that had been designated as Series A Preferred Stock, and all provisions included under the caption "Preferred Stock," and all references to the Preferred Stock and Series A Preferred Stock shall be deleted and shall be of no further force or effect, except that all declared and unpaid dividends on Preferred Stock shall become immediately payable by the Corporation to the holders of such shares outstanding immediately prior to such Mandatory Conversion Date. "Qualified Initial Public Offering" means the sale of shares of Common Stock in the initial firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, in which (i) the initial public offering price per share times the number of shares of Common Stock issued and outstanding before giving effect to shares proposed to be sold pursuant to the Registration Statement equals or exceeds \$100,000,000, (ii) the proceeds, before expenses, to the Company are at least \$30,000,000 and (iii) the managing underwriters have been approved by a majority of the Board of Directors.

(b) Without limiting the foregoing, upon the affirmative vote or written consent of at least a majority of the Series A Preferred Stock approving a mandatory conversion of all shares of Series A Preferred Stock and setting forth a Mandatory Conversion Date, (also a "Mandatory Conversion Date"), (i) all outstanding shares of Series A Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Conversion Price and (ii) the number of authorized shares of Preferred Stock shall be automatically reduced by the number of shares of Preferred Stock that had been designated as Series A Preferred Stock and all provisions included under the name of Series A Preferred Stock, and all references to such series of Preferred Stock shall be deleted and shall be of no further force or effect, except that all declared and unpaid dividends on Preferred Stock shall become immediately payable by the Corporation to the holders of such shares outstanding immediately prior to such Mandatory Conversion Date.

(c) All holders of record of shares of Preferred Stock shall be given written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 5. Such notice need not be given in advance of the occurrence of the Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid, to each record holder of Preferred Stock at such holder's address last shown on the records of the transfer agent for the Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent). Upon receipt of such notice, each holder of shares of Preferred Stock shall surrender his or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 5. On the Mandatory Conversion Date, all outstanding shares of Preferred Stock shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a

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holder of Common Stock) will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Subsection 4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(d) All certificates evidencing shares of Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and cancelled and the shares of Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. Such converted Preferred Stock may not be reissued, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

6. Redemption.

So long as any shares of Preferred Stock shall remain outstanding, at any time after the fifth anniversary of the closing date of the Series A Convertible Participating Preferred Stock Purchase Agreement by and between the Corporation and certain purchasers of Series A Preferred Stock (such date being referred to hereinafter as the "Mandatory Redemption Date"), the Corporation shall, subject to the conditions set forth below, redeem from each holder of shares of Preferred Stock that requests redemption, within 60 days following the written request (the "Redemption Request") of such holder (a "Requesting Holder"), at a price equal to \$1.00 per share, plus any dividends declared but unpaid thereon, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares (the "Mandatory Redemption Price"), the number of shares of Preferred Stock requested to be redeemed by each Requesting Holder in three equal annual installments (each a "Redemption").

(b) The Corporation shall provide notice of its receipt of the Redemption Request, specifying the time, manner and place of redemption and the Mandatory Redemption Price (a "Redemption Notice"), by first class or registered mail, postage prepaid, to each holder of record of Preferred Stock at the address of such holder last shown on the records of the transfer agent therefor (or the records of the Corporation, if it serves as its own transfer agent), not less than 45 days prior to each Redemption. Each holder of Preferred Stock (other than an initial Requesting Holder) may elect to

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become a Requesting Holder at such Redemption by so indicating in a written notice mailed to the Company, by first class or registered mail, postage prepaid, at least 30 days prior to such Redemption. Except as provided in Section 6(c) below, each Requesting Holder shall surrender to the Corporation the certificate(s) representing the shares to be redeemed at each such date, in the manner and at the place designated in the Redemption Notice. Thereupon, the Mandatory Redemption Price shall be paid by the Corporation to the order of each such Requesting Holder within 30 days following the Corporation's receipt of the shares tendered for redemption and each certificate surrendered for redemption shall be cancelled. In the event that less than all of the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) If the funds of the Corporation legally available for redemption of Preferred Stock are insufficient to redeem the number of shares of Preferred Stock required under this Section 6 to be redeemed from Requesting Holders on any date, those funds which are legally available will be used to redeem the maximum possible number of such shares of Preferred Stock ratably on the basis of the number of shares of Preferred Stock which would be redeemed on such date if the funds of the Corporation legally available therefor had been sufficient to redeem all shares of Preferred Stock required to be redeemed on such date. At any time thereafter when additional funds of the Corporation become legally available for the redemption of Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of the shares which the Corporation was theretofore obligated to redeem, ratably on the basis set forth in the preceding sentence.

(d) Unless there shall have been a failure to pay the Mandatory Redemption Price, all rights of the holder of each share redeemed at each Redemption as a stockholder of the Corporation by reason of the ownership of such share will cease, except the right to receive the Mandatory Redemption Price of such share, without interest, upon presentation and surrender of the certificate representing such share, and such share will not from and after such payment therefore be deemed to be outstanding.

(e) Any Preferred Stock redeemed pursuant to this Section 6 will be cancelled and will not under any circumstances be reissued, sold or transferred and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Preferred Stock accordingly.

7. Waiver.

Any of the rights of the holders of a series of Preferred Stock set forth in this Certificate of Incorporation may be waived by the affirmative vote of the holders of more than 66 2/3% of the shares of the applicable series of Preferred Stock then outstanding, each series voting as a separate class.

8. Treasury Shares.

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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, and the disposition of any such shares shall be considered an issue or sale of Common Stock for the purposes of Section 4 hereof.

9. Certain Events.

If any event occurs as to which in the opinion of the Board of Directors of the Corporation the other provisions of this Article Fourth are not strictly applicable or if strictly applicable would not fairly protect the conversion rights of the holders of Preferred Stock in accordance with the essential intent and principles of such provisions, then such Board of Directors, acting by a vote of at least 75% of the members thereof, shall provide for the benefit of holders of shares of Preferred Stock an adjustment, if any, on a basis consistent with such essential intent and principles, necessary to preserve, without dilution, the rights of the holders of Preferred Stock. Upon such vote by the Board of Directors, the Corporation shall forthwith make the adjustments described therein; provided, however, that no such adjustment shall have the effect of increasing the Conversion Price as otherwise determined pursuant to Section 4 except in the event of a combination of shares of the type contemplated in Section 4(e) and then in no event to an amount larger than the conversion price as adjusted pursuant to Section 4(e).

10. Closing of Books.

The Corporation will at no time close its transfer books against the transfer of any Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any Preferred Stock in any manner which interferes with the timely conversion of such Preferred Stock."

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IN WITNESS WHEREOF, KLOCWORK SOLUTIONS INC. has caused this Certificate to be signed by its authorized officer on this 6<sup>th</sup> day of October, 2002.

KLOCWORK SOLUTIONS INC.

By:   
Name: ERIC GOODWIN  
Title: CEO

DEVON J. GOLDBERG  
Staff Attorney  
Admitted in California and Nevada Only  
212-259-6705  
dgoldberg@deweyballantine.com

April 30, 2003

BY EXPRESS MAIL

Commissioner of Patents and Trademarks  
Box Assignments  
Washington, D.C. 20231

Re: Trademark Change of Name of Klocwork Solutions, Inc. to Klocwork Inc.

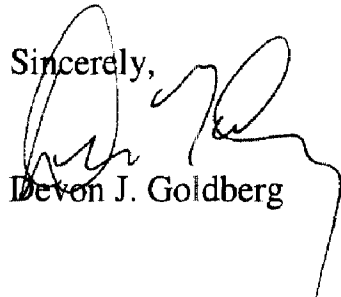
Dear Sir/Madam:

Enclosed for recordation please find the following:

1. Two copies of the trademark recordation cover sheet giving the particulars of the Trademark Change of Name document to be recorded;
2. The Certificate of Amendment of Certificate of Incorporation document;
3. A check in the sum of \$40.00 to cover the recordation fees; and
4. A pre-addressed, stamped postcard.

Kindly stamp the postcard with acknowledgement of receipt of these documents and return it to me. Please then record the enclosed document and issue an Notice of Recordation. If you have any questions, please do not hesitate to contact me at (212) 259-6705.

Sincerely,

  
Devon J. Goldberg

Enclosures  
copy to Aryn Hassanally, Esq.



# RECORDATION FORM COVER SHEET TRADEMARKS ONLY

Tab settings ⇌ ⇌ ⇌ ▼ ▼ ▼ ▼ ▼ ▼ ▼

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

1. Name of conveying party(ies):

Klocwork Solutions, Inc.

- Individual(s)                       Association
- General Partnership               Limited Partnership
- Corporation-State Delaware
- Other \_\_\_\_\_

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

3. Nature of conveyance:

- Assignment                               Merger
- Security Agreement                   Change of Name
- Other \_\_\_\_\_

Execution Date: October 8, 2002

2. Name and address of receiving party(ies)

Name: Klocwork, Inc.

Internal Address: \_\_\_\_\_  
Address: \_\_\_\_\_

Street Address: One Chrysalis Way, 4th Floor

City: Ottawa State: Ont. Zip: K2G6E8

Individual(s) citizenship Canada

Association \_\_\_\_\_

General Partnership \_\_\_\_\_

Limited Partnership \_\_\_\_\_

Corporation-State Delaware

Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

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

A. Trademark Application No.(s) 76360589

B. Trademark Registration No.(s) N/A

Additional number(s) attached  Yes  No

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

Name: Stanton J. Lovenworth, Esq.

Internal Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Street Address: Dewey Ballantine LLP

1301 Avenue of the Americas

City: New York State: NY Zip: 10019

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41).....\$ 40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

N/A

(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.*

Stanton J. Lovenworth

Name of Person Signing

  
Signature

4/30/03

Date

Total number of pages including cover sheet, attachments, and document: 39

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