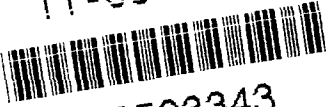


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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

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

1. Name of conveying party(ies): ServiceBench.com, Inc. N.S.-03
Individual(s) Association
General Partnership Limited Partnership
[X] Corporation-State
Other Delaware
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: Service Bench, Inc.
Internal Address: Suite 125
Street Address: 3998 Fair Ridge Dr.
City: Fairfax State: VA Zip: 22033
Individual(s) citizenship
Association
General Partnership
Limited Partnership
[X] 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 [X] Change of Name
Other November 6, 2001
Execution Date:

4. Application number(s) or registration number(s):
A. Trademark Application No.(s) 76/400,012
Additional number(s) attached Yes [X] No

B. Trademark Registration No.(s) 2,453,192; 2,453,193; 2,561,711; 2,688,045; 2,724,056; 2,724,057
Additional number(s) attached Yes [X] No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Sherry H. Flax, Esquire
Internal Address: Saul Ewing LLP
Street Address: 100 S. Charles St., 15th Floor
City: Baltimore State: MD Zip: 21201

6. Total number of applications and registrations involved: 7
7. Total fee (37 CFR 3.41) \$ 190.00
[X] Enclosed
Authorized to be charged to deposit account
8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.
Sherry H. Flax, Esquire Name of Person Signing
Sherry Flax Signature
Nov. 3, 2003 Date
Total number of pages including cover sheet, attachments, and document:

11/06/2003 6TON11 00000030 76400012

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

01 FC:0521 40.00 OP
02 FC:0522 150.00 OP

TRADEMARK REEL: 002856 FRAME: 0614

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
SERVICEBENCH.COM, INC.

Pursuant to Section 242
of the Delaware General Corporation Law

ServiceBench.com, Inc. (hereinafter called the "Corporation"), organized and existing under and by virtue of the Delaware General Corporation Law, does hereby certify as follows:

At a meeting of the Board of Directors of the Corporation a resolution was duly adopted, in accordance with Sections 242 and 245 of the Delaware General Corporation Law, setting forth an amendment to the Certificate of Incorporation of the Corporation, originally filed with the Secretary of State of Delaware on April 14, 2000 under the name ServiceBench.com, Inc. and declaring said amendment to be advisable. The stockholders of the Corporation, in accordance with Sections 242 and 228 of the Delaware General Corporation Law, duly approved said proposed amendment by written consent. The resolution setting forth the amendment is as follows:

FIRST: The name of the Corporation is ServiceBench, Inc.

SECOND: The address of the Corporation's registered office in this state is 222 Delaware Avenue, Suite 1200, Wilmington, Delaware 19801 in the county of New Castle.

THIRD: The name of the Corporation's Registered Agent at that office is ATA Corporate Services, Inc.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 60,000,000 shares of Common Stock, \$0.005 par value (hereinafter referred to as "Common Stock") and (ii) 40,000,000 shares of Preferred Stock, \$0.005 par value per share ("Preferred Stock"), 15,000,000 shares of which are designated "Series A Preferred Stock" ("Series A Preferred"), and 25,000,000 shares of which are designated "Series B Preferred Stock" ("Series B Preferred").

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 of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock of any series.

2. Voting. Subject to Section 8 under Section B below, the holders of 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.

3. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefore 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. Issuance. Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Corporation as hereinafter provided. Any shares of Preferred Stock which may be redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law or by the terms of any series of Preferred Stock. To the extent permitted by law, different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes unless expressly provided.

Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by resolution or resolutions providing for the issue of the shares thereof, to determine and fix such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, special voting rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by the Delaware General Corporation Law. Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to the Preferred Stock of any other series to the extent permitted by law. Except as otherwise specifically provided in this Certificate of Incorporation or by contract, no vote of the holders of the Preferred Stock or Common Stock shall be a prerequisite to the issuance of any shares of any series of the Preferred Stock authorized by and complying with the conditions of this Certificate of Incorporation, the right to have such vote being expressly waived by all present and future holders of the capital stock of the Corporation.

2. Dividend Provisions.

(a) The Corporation shall not declare or pay any dividends or distributions on shares of Common Stock (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) until the holders of the Preferred Stock then outstanding shall have first received, or simultaneously receive, out of any assets legally available therefore, a distribution on each outstanding share of Preferred Stock in an amount at least equal to the product of (i) the per share amount, if any, of the dividends or other distributions to be declared, paid or set aside for the Common Stock, multiplied by (ii) the number of whole shares of Common Stock into which such share of Preferred Stock is then convertible. Such dividends shall not be cumulative.

(b) In addition to the dividends required to be paid to the holders of Series B Preferred pursuant to Section 2(a), the holders of shares of Series B Preferred shall be entitled to receive, out of funds legally available therefor, dividends of \$.0102211 per share per annum (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), payable beginning on the third anniversary of issuance of the Series B Preferred and annually thereafter. Such dividends shall accrue and shall be cumulative from the date of issuance of each share of Series B Preferred Stock, whether or not declared.

3. Liquidation.

(a) Series B Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, each holder of Series B Preferred shall be entitled to receive in respect of each share of Series B Preferred then held by such holder, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Series A Preferred or Common Stock by reason of their ownership thereof, an amount equal to (i) the purchase price for such shares (the "Series B Liquidation Preference") (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), multiplied by two, plus (ii) an amount equal to eight percent (8%) of the Series B Liquidation Preference per annum (compounded annually) from the Original Issue Date, as defined in Section 6(d) below, of such shares, to the extent dividends pursuant to Section 2(b) above have not been paid. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series B Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series B Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) Series A Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, following payment to the holders of Series B Preferred of the full amount to which they are entitled pursuant to Section 3(a) above, each holder of Series A Preferred shall be entitled to receive in

respect of each share of Series A Preferred then held by such holder, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount equal to the greater of (i) the purchase price for such shares (the "Series A Liquidation Preference") (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) plus an amount equal to eight percent (8%) of the Series A Liquidation Preference per annum (compounded annually) from the Original Issue Date, as defined in Section 6(d) below, of such shares, or (ii) the amount that would have been payable to such holder pursuant to Section 6(c) below if immediately prior to such distribution all shares of Series A Preferred had been converted to Common Stock at the then effective conversion rate pursuant to Section 6 below. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred are insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive.

(c) Remaining Assets. Upon the completion of the distributions required by Sections 3(a) and 3(b) above, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among the holders of Series B Preferred and Common Stock pro rata based on the number of shares of Common Stock held by each such holder or the number of shares of Common Stock into which the shares of Series B Preferred held by each such holder are convertible.

(d) Certain Acquisitions.

(i) Deemed Liquidation. For purposes of this Section 3, a liquidation, dissolution or winding up of the Corporation shall be deemed to occur if, with the written consent of the holders of at least 66 2/3% of the then outstanding shares of Series A Preferred and the holders of at least 66 2/3% of the then outstanding shares of Series B Preferred, the Corporation shall sell, convey, or otherwise dispose of or encumber, other than for capital leases, all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a wholly-owned subsidiary corporation or a merger or consolidation in which the Corporation is the surviving entity) or effect any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of, provided that this Section 3(d)(i) shall not apply to a merger effected exclusively for the purpose of changing the domicile of the Corporation or to an issuance of Common Stock or Preferred Stock resulting in such a change in voting power which is consented to in writing by the holders of at least 66 2/3% of the then outstanding shares of Series A Preferred and the holders of at least 66 2/3% of the then outstanding shares of Series B Preferred.

(ii) Valuation of Consideration. In the event of a deemed liquidation as described in Section 3(d)(i) above, if the consideration received by the

Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability:

(I) If traded on a securities exchange or the Nasdaq Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day period ending three (3) days prior to the closing;

(II) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day period ending three (3) days prior to the closing; and

(III) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the Board of Directors, including the Directors elected exclusively by the holders of Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 3(d)(ii)(A) to reflect the approximate fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock, voting as a separate class.

(iii) Notice of Transaction. The Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than ten (10) days prior to the stockholders' meeting called to approve such transaction, or ten (10) 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 a summary of the material provisions of this Section 3, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than ten (10) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock, voting as a separate class.

(iv) Effect of Noncompliance. In the event the requirements of this Section 3(d) are not complied with and such non-compliance is not waived by the holders of a majority of the Preferred Stock, the Corporation shall forthwith either cause

the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 3(d)(iii) hereof.

4. Redemption.

(a) At any time after January 1, 2005, provided at least forty-five (45) days written notice has been given to the Corporation by the holders of not less than a majority of the then outstanding shares of Preferred Stock that the Preferred Stock be redeemed, the Corporation shall, from funds legally available therefor, redeem all outstanding shares of Preferred Stock in two equal annual installments. The first installment shall occur upon the expiration of the forty-five day notice period, and the second installment shall occur one year thereafter. The Corporation shall effect such redemption of the Preferred Stock as of the date specified in the notice or otherwise specified herein (the "Redemption Date") by paying in respect of each such share to be redeemed an amount equal to the greater of (i) the sum of (A) the Liquidation Preference for the Series of Preferred Stock being redeemed (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), plus (B) an amount equal to eight percent (8%) of such Liquidation Preference per annum (compounded annually) from the Original Issue Date of such share until the applicable Redemption Date, to the extent dividends pursuant to Section 2(b) above have not been paid, or (ii) the Fair Market Value (as determined pursuant to subsections (d) and (e) below) of such shares (the price determined pursuant to clauses (i) or (ii), as the case may be, is referred to herein as the "Redemption Price"), in exchange for each share of Preferred Stock to be redeemed (as adjusted for any stock dividends, combinations or splits with respect to such shares).

(b) At least fifteen (15) but no more than thirty (30) days prior to the Redemption Date, written notice shall be mailed, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the shares of Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Except as provided in subsection (c), on or after the Redemption Date, each holder of shares of Preferred Stock to be redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) From and after the applicable Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Preferred Stock designated for redemption in the Redemption Notice for redemption as of the Redemption Date as holders of shares of Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Preferred Stock on either installment of the required redemption are insufficient to redeem the total number of shares of Preferred Stock to be redeemed on such date, the holders of a majority of the outstanding shares of Preferred Stock shall be entitled to elect either or both of the following remedies: (i) elect a majority of the Board of Directors, and (ii) cause a Sale of the Company, in accordance with Section 5 below. In addition, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of shares of Preferred Stock. The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Preferred Stock, such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on any Redemption Date but which it has not redeemed. At such time as the balance of shares which the Corporation is obligated to redeem have been redeemed, the holders of the Preferred Stock shall no longer be entitled to the remedies provided in paragraphs (i) and (ii) above and any Directors elected pursuant thereto shall immediately resign.

(d) The Fair Market Value of the shares of Preferred Stock shall be determined in good faith by the Board of Directors. If the holders of a majority of the then outstanding shares of Preferred Stock disagree as to the Board of Directors' determination of Fair Market Value, an appraiser will be chosen by the mutual agreement of the Corporation and the holders of a majority of the then outstanding shares of Preferred Stock to make such determination. If the Corporation and the holders of a majority of the then outstanding shares of Preferred Stock are unable to select an appraiser by mutual agreement, each of the Corporation and the holders of a majority of the then outstanding shares of Preferred Stock shall designate an appraiser acceptable to them, and such designees shall by mutual agreement select another appraiser to make a determination of the Fair Market Value. The determination of such appraiser so selected will be the sole appraisal, and such appraisal will be binding on the Corporation and all holders of shares of Preferred Stock. The appraiser so appointed must be competent and experienced to appraise investments similar to the shares of Preferred Stock and must be unaffiliated with the Corporation or any of the parties affected by such determination of Fair Market Value. The fees and expenses of all appraisers will be paid by the Corporation.

(e) Any appraiser selected in accordance with subsection (d) above will first determine the Company Value of the Corporation as of the day immediately preceding the delivery of the Redemption Notice. "Company Value" shall mean the

amount which the Corporation would receive in an all cash sale of all of its assets and businesses as a going concern (free and clear of all liens and after payment of all liabilities) in an arms-length transaction with an unaffiliated third party consummated on the day immediately preceding the delivery of the Redemption Notice. After a determination of the Company Value of the Corporation is made as provided above, the appraiser will determine the Fair Market Value of shares of Preferred Stock by making a calculation reflecting the cash distributions which would be made to the stockholders of the Corporation in accordance with this Certificate of Incorporation if the Corporation were deemed to have received such Company Value in cash and then distributed the same to the stockholders in accordance with the terms of this Certificate of Incorporation incident to the liquidation of the Corporation after payment to all of the Corporation's creditors. Any determination of the Fair Market Value of shares of Preferred Stock will fully account for the relative distribution priority of shares of Preferred Stock. In making its determination, the appraiser may not take into account any (i) minority interest discount, (ii) liquidity discount or (iii) control premium. The appraiser shall make its determination of the Fair Market Value within twenty-one (21) days after the date it was retained for such purpose. Immediately upon determining the Fair Market Value of the shares of Preferred Stock, the appraiser will give a written notice to the Corporation and all holders of shares of Preferred Stock who have elected to sell their shares to the Corporation under this Section 4.

5. Sale of Company.

(a) Third Party Transaction. Notwithstanding anything to the contrary contained herein, at any time after January 1, 2005, if the holders of at least a majority of the then outstanding shares of Preferred Stock request a redemption and the Corporation is unable to redeem all outstanding shares of Preferred Stock, any holder or holders of two-thirds of the outstanding shares of Preferred Stock shall have the right to seek a Sale of the Corporation (as defined below) and produce a third party or parties to acquire (i) all of the issued and outstanding capital stock of the Corporation (whether by merger, consolidation or sale or transfer of stock) or (ii) all or substantially all of the Corporation's assets on a consolidated basis (any such acquisition is referred to as a "Third Party Transaction"); provided, however, that if any of the Proposing Stockholders (as defined below) or any Significant Holder (as defined below) of any such Proposing Stockholders shall be a Significant Holder of the Independent Third Party (as defined below), such Sale of the Corporation to the Independent Third Party shall also require the approval of a Majority of the Qualified Directors (as defined below) and no Sale Notice (as defined below) may be given until such approval is obtained. The holder or holders proposing a Sale of the Corporation (the "Proposing Stockholders") shall notify the Corporation and the other Stockholders (the "Other Stockholders") prior to commencing any actions in connection with such transaction.

(b) Election. The Proposing Stockholders shall deliver written notice to the Corporation and the Other Stockholders setting forth in reasonable detail the terms of the proposed Sale of the Corporation and copies of binding commitments regarding the financing thereof (the "Sale Notice"). Within 30 days following receipt of the Sale Notice (the "Election Period"), the Other Stockholders shall deliver to the Corporation

and the Proposing Stockholders written notice setting forth such holders' election (i) to consent to and raise no objections against the proposed Sale of the Corporation, and if the Sale of the Corporation is structured as a sale of stock, to sell their Stockholder Shares on the terms and conditions set forth in the Sale Notice, or (ii) if such Other Stockholders hold more than 35% of the outstanding capital stock of the Corporation on an as converted to Common Stock basis, to deliver a written offer (a "Stockholder Offer"), upon substantially the same terms as described in the Sale Notice, to acquire the Corporation (a "Stockholder Transaction"). If any Other Stockholder has not delivered a Stockholder Offer within such 30-day period, such Other Stockholder will be deemed to have delivered a written notice setting forth the statements contained in clause (i) above and the Proposing Stockholders shall have 120 days after the expiration of the Election Period to consummate the Sale of the Corporation on the terms specified in the Sale Notice. If the Sale of the Corporation is not consummated within such 120-day period, the Proposing Stockholders shall again comply with the provisions of this subsection 5(b). If the Other Stockholders have delivered a Stockholder Offer within the Election Period, the Other Stockholders must (A) deliver an executed definitive and binding agreement from the Other Stockholders to consummate the Stockholder Transaction and obtain binding commitments regarding the financing thereof reasonably satisfactory to the Proposing Stockholders both within 30 days after receipt by the Proposing Stockholders of the Stockholder Offer and (B) must consummate the Stockholder Transaction within 120 days after receipt by the Proposing Stockholders of the Stockholder Offer. If any of the conditions set forth in (A) or (B) of the preceding sentence is not fulfilled, the Other Stockholders will be deemed to have delivered a written notice setting forth the statements contained in clause (i) above and the Proposing Stockholders will have 90 days from the date on which the condition is not fulfilled to consummate the Sale of the Corporation on the terms specified in the Sale Notice. If the conditions set forth in (A) and (B) of the second preceding sentence are met, the Proposing Stockholders will be deemed to have delivered a written notice setting forth the statements contained in clause (i) above with respect to the Stockholder Offer.

(c) Conditions to Obligation. The obligations of the Other Stockholders and Proposing Stockholders to participate in or make an alternative offer to any Third Party Transaction are subject to the satisfaction of the following conditions: (i) upon consummation of the Third Party Transaction, all holders of Common Stock shall receive the same form and amount of consideration per share of Common Stock (including for this purpose amounts allocated to noncompetition, consulting and other arrangements), or if the holders of Common Stock are given an option as to the form and consideration to be received, all holders shall be given the same option and (ii) the purchase agreement for such Third Party Transaction shall not provide for any indemnification by a Stockholder in excess of the amount of consideration to be received by such Stockholder upon the consummation of the Third Party Transaction.

(d) Definitions. For purposes of this Section 5, the following definitions apply:

(i) "Independent Third Party" means any Person who, immediately prior to the contemplated transaction, does not own in excess of 5% of the

Corporation's Common Stock on a fully-diluted basis (a "5% Owner"), who is not controlling, controlled by or under common control with any such 5% Owner and who is not the spouse or descendent (by birth or adoption) of any such 5% Owner or a trust for the benefit of such 5% Owner and/or such other Persons.

(ii) "Majority of the Qualified Directors" shall mean a majority of those Directors of the Corporation who (x) do not own, directly or indirectly, more than 1% of the outstanding voting or equity securities of the Independent Third Party (a "Conflicting Interest") and (y) were not appointed as a Director of the Corporation by a shareholder of the Corporation which (A) holds a Conflicting Interest or (B) is a Significant Holder that holds a Conflicting Interest.

(iii) "Sale of the Corporation" means the sale of the Corporation to an Independent Third Party or group of Independent Third Parties pursuant to which such party or parties acquire (I) capital stock of the Corporation possessing the voting power under normal circumstances to elect a majority of the Corporation's board of Directors (whether by merger, consolidation or sale or transfer of the Corporation's capital stock) or (II) all or substantially all of the Corporation's assets determined on a consolidated basis.

(iv) "Significant Holder" of a Person that owns, directly or indirectly, 5% or more of the voting securities or 5% or more of the equity securities of such Person.

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

(a) Right to Convert. Each share of 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 (i) the purchase price therefor, plus, in the case of Series B Preferred only, an amount equal to the eight percent (8%) of the purchase price per annum for such share from the original issue date of such shares (the "Accrual Amount"), to the extent dividends pursuant to Section 2(b) above have not been paid, by (ii) the Conversion Price (as defined below) in effect at the time of conversion. The Conversion Price for the Series A Preferred shall initially be \$.2519685. The Conversion Price for the Series B Preferred shall initially be \$.1277647. 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.

In the event of a notice of redemption of any shares of Preferred Stock pursuant to Section 4 hereof, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the third full day preceding the date fixed for redemption, unless the redemption price is not paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation 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 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 Conversion Price.

(c) Mechanics of Conversion.

(i) In order for a holder of Preferred Stock to convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock, at the office of the transfer agent for the 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 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 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.

(ii) The Corporation shall at all times when the 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 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 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 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.

(iii) Upon any such conversion, no adjustment to the Conversion Price shall be made for any declared but unpaid dividends on the Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion. In lieu of receiving shares of Common Stock upon conversion in respect of the Accrual

Amount, if elected in writing by the holders of a majority of the then outstanding shares of Series B Preferred, the Company will pay the Accrual Amount in cash.

(iv) All shares of Preferred Stock which shall have been surrendered for conversion as herein provided 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 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 Preferred Stock accordingly.

(v) The Corporation shall pay any and all issue and other taxes (excluding any income, capital gains or other similar 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 6. 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 were 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 6, 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 of 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.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 6(d)(iii) below, deemed to be issued) by the Corporation after the 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 the 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 6(e), 6(f) or 6(g) below;

(IV) up to 100,000 shares of Common Stock or other securities of the Corporation that, as of the first date of issuance of the Preferred Stock, have no preference or priority to the Preferred Stock, issued in conjunction with a joint venture, to strategic partners, to equipment lessors, to vendors or institutional credit financing sources approved by the Director elected by the holders of Series A Preferred and the Directors elected by the holders of Series B Preferred; or

(V) up to 7,925,000 shares of Common Stock (or Options with respect thereto) (subject in either case to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), issued or issuable to employees or Directors of, or consultants to, the Corporation or its subsidiaries pursuant to a plan or arrangement approved by the Board of Directors of the Corporation (provided that any Options for such shares that expire or terminate unexercised shall not be counted toward such maximum number).

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price or the number of shares of Common Stock into which the Preferred Stock is convertible shall be made, by adjustment in the applicable Conversion Price thereof: (a) unless the consideration per share (determined pursuant to Subsection 6(d)(v)) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price in effect immediately prior to the issue of such Additional Shares, or (b) if prior to such issuance, the Corporation receives written notice from the holders of at least 51% of the then outstanding shares of Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance of Additional Shares of Common Stock.

(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 Original Issue Date shall issue any Options (excluding Options covered by Subsection 6(d)(i)(D)(IV) above) 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 6(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 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) 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 the Conversion Price should be further equitably readjusted to account for the conversion by any holder during the period such Conversion Price was overadjusted under 6(d)(iii), including, if necessary, cancellation of any shares of Common Stock overissued upon a conversion during such period;

(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

(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 Original Issue Date, amends the terms of any such Options or Convertible Securities (whether such Options or Convertible Securities were outstanding on the 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 the Original Issue Date and the provisions of this Subsection 6(d)(iii) shall apply.

(iv) Adjustment of Conversion Price of Preferred Stock Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Original Issue Date for any series of Preferred Stock issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 6(d)(iii)), without consideration or for a consideration per share less than the applicable Conversion Price for such series of Preferred Stock in effect immediately prior to such issue, then and in such event, such Conversion Price shall be reduced, concurrently with such issue, to the consideration per share received by the Corporation for the issue of the Additional Shares of Common Stock (determined pursuant to Subsection 6(d)(v)).

(v) Determination of Consideration. For purposes of this Subsection 6(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 Corporation, excluding amounts paid or payable for accrued interest or dividends;

(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 6(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.

(e) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Original Issue Date for a series of Preferred Stock effect a subdivision of the outstanding Common Stock, the Conversion Price for such series 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 Original Issue Date combine the outstanding shares of Common Stock, the Conversion Price for such series 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 Original Issue Date for a series of Preferred Stock 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 Conversion Price for such series 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 Conversion Price then in effect by a fraction:

(i) 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

(ii) 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 being issued with respect to each share of Common Stock in such dividend or distribution.

(g) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the 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 securities of the Corporation (other than shares of Common Stock), then and in each such event provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation that they would have received 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; and provided further, 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 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 Subsection 3(c), if there shall occur any reorganization, recapitalization, consolidation or merger involving the Corporation in which the Common 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 6), 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 6 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 6 (including provisions with respect to changes in and other adjustments of the 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 6 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.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 6, 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, but no more than once per fiscal quarter, 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 a 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 20 days prior to the record date or effective date for the event specified in such notice.

7. Mandatory Conversion.

(a) Upon the closing of the sale of shares of Common Stock, at a price to the public of at least three times the original purchase price for the Series B Preferred (subject to appropriate adjustment for stock splits, stock dividends, combinations and other similar recapitalizations affecting such shares), in a firm commitment underwritten public offering resulting in at least \$20,000,000 of gross proceeds to the Corporation (the "Mandatory Conversion Date"), all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate and the number of authorized shares of Preferred Stock shall be automatically reduced by the number of shares of Preferred Stock so converted.

(b) 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 7. 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 or by federal express or other overnight service, 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 7. 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 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 6(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(c) 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 canceled 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.

8. Voting Rights; Directors.

(a) Except as otherwise provided herein or by law, the holder of each share of Preferred Stock shall have the right to the number of votes as is equal to the number of shares of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Unless otherwise approved in writing by the holders of a majority of the outstanding shares of Preferred Stock, voting separately as a class, and a majority of the outstanding shares of Common Stock voting separately as a class, the number of Directors which shall constitute the entire board of Directors of the Corporation shall be seven. The holders of record of a majority of the outstanding shares of Common Stock, exclusively and as a separate class, shall be entitled to elect two Directors of the Corporation, one of whom shall be the Chief Executive Officer of the Corporation and the other of whom shall be nominated by John Estrada, Louis Rose and Robert Baily so long as such persons are stockholders of the Corporation (the "Common Directorships"). The holders of record of a majority of the outstanding shares of Series A Preferred, exclusively and as a separate class, shall be entitled to elect one Director of the Corporation (the "Series A Directorship"). The holders of record of a majority of the outstanding shares of Series B Preferred, exclusively and as a separate class, shall be entitled to elect two Directors of the Corporation (the "Series B Directorships"), one of whom shall be a designee of NextGen Fund II, L.L.C. and NextGen SBS Fund II, L.L.C. and the other of whom shall be a designee of another institutional investor that purchases at least \$400,000 of Series B Preferred, or if there is no such investor, a designee of the holders of a majority of the Series B Preferred. Two additional Directors (the "Outside Directors") shall be persons nominated by the Directors holding the Common Directorships, approved by the Directors holding the Series A Directorships and Series B Directorships and elected by the holders of a majority of the outstanding shares of Preferred Stock, voting separately as a class, and the holders of a majority of the outstanding shares of Common Stock voting separately as a class. A vacancy in the Series A Directorship shall be filled solely by the vote or written consent in lieu of

meeting of the holders of record of a majority of outstanding shares of Series A Preferred by a designee selected as provided above, and no holder of Common Stock or Series B Preferred in its capacity as such shall vote to remove any Director elected exclusively by the holders of Series A Preferred. A vacancy in any Series B Directorship shall be filled solely by the vote or written consent in lieu of meeting of the holders of record of a majority of the outstanding shares of Series B Preferred by a designee selected as provided above, and no holder of Common Stock or Series A Preferred in its capacity as such shall vote to remove any Director elected exclusively by the holders of Series B Preferred. A vacancy in a Common Directorship shall be filled solely by the vote or written consent in lieu of a meeting of the holders of a majority of the outstanding shares of Common Stock, voting separately as a class, and no holder of Preferred Stock, in its capacity as such shall vote to remove any Director elected exclusively by the holders of Common Stock. A vacancy in an Outside Director position shall be filled only by vote or written consent in lieu of a meeting of both the holders of at least a majority of the outstanding shares of Preferred Stock, voting separately as a class, and the holders of a majority of the outstanding shares of Common Stock, voting separately as a class. Until a vacancy in any Director position is filled, the affairs of the Corporation shall be conducted by the remaining Directors then in office. At any meeting held for the purpose of nominating or electing Directors, the presence in person or by proxy of the holders of a majority of the class or series of capital stock which has the exclusive right to elect a Director hereunder shall constitute a quorum for the election of nomination of Directors by such class or series.

FIFTH: In furtherance of and not in limitation of powers conferred by statute, it is further provided: (a) Election of Directors need not be by written ballot, and (b) subject to the power of the stockholders to amend or repeal the By-Laws, the Board of Directors is expressly authorized to adopt, amend or repeal the By-Laws of the Corporation.

SIXTH: Except to the extent that the General Corporation Law of Delaware prohibits the elimination or limitation of liability of Directors for breaches of fiduciary duty, no Director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a Director, notwithstanding any provision of law imposing such liability. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any Director of the Corporation for or with respect to any acts or omissions of such Director occurring prior to such amendment.

SEVENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute and this Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its President this 6th day of November, 2001.

SERVICEBENCH.COM, INC.

By: 

John A. Estrada