

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	CHANGE OF NAME

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Trendium, Inc.		06/20/2008	CORPORATION: DELAWARE

**RECEIVING PARTY DATA**

Name:	NetTraffic, Inc.
Street Address:	3000 Internet Boulevard
Internal Address:	Suite 190
City:	Frisco
State/Country:	TEXAS
Postal Code:	75034
Entity Type:	CORPORATION: DELAWARE

**PROPERTY NUMBERS Total: 7**

Property Type	Number	Word Mark
Registration Number:	3482127	DSLXCEND
Registration Number:	3410464	NETRAFFIC
Registration Number:	2675418	SERVICEPATH
Registration Number:	2643785	T
Registration Number:	2643784	T TRENDIUM
Registration Number:	2732595	TRENDIUM
Registration Number:	2845731	PERFORMAX

**CORRESPONDENCE DATA**

Fax Number: (919)781-4865  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 919-781-4000  
 Email: ip@wyrick.com  
 Correspondent Name: Christopher L. Sorey  
 Address Line 1: 4101 Lake Boone Trail

OP \$190.00 3482127

Address Line 2: Suite 300  
Address Line 4: Raleigh, NORTH CAROLINA 27607

ATTORNEY DOCKET NUMBER:	012415.004
NAME OF SUBMITTER:	Christopher L. Sorey
Signature:	/cls/
Date:	12/29/2008

**Total Attachments: 20**

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# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "TRENDIUM, INC.", CHANGING ITS NAME FROM "TRENDIUM, INC." TO "NETTRAFFIC, INC.", FILED IN THIS OFFICE ON THE TWENTIETH DAY OF JUNE, A.D. 2008, AT 9 O'CLOCK A.M.

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

3073905 8100

080688217

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State  
AUTHENTICATION: 6678730

DATE: 06-23-08

TRADEMARK  
REEL: 003910 FRAME: 0095

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
TRENDIUM, INC,

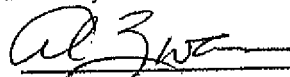
Pursuant to Section 242 and 245 of the General Corporation Law of Delaware, the undersigned corporation hereby submits the following for the purpose of amending and restating its Certificate of Incorporation, and does hereby certify as follows:

1. The name of the corporation is Trendium, Inc. and the corporation's original Certificate of Incorporation was filed on August 18, 1999, under the name Trendium, Inc.;
2. The corporation's Certificate of Incorporation is hereby amended and restated in its entirety, including to change its name to "NetTraffic, Inc.", as set forth in the text of the Amended and Restated Certificate of Incorporation attached hereto as Exhibit A; and
3. This Amended and Restated Certificate of Incorporation will be effective upon filing.

IN WITNESS WHEREOF, said Trendium, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by its duly authorized officer this 10<sup>th</sup> day of June 2008.

TRENDIUM, INC.

By:



Al Zwan, Treasurer

EXHIBIT A

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
NETTRAFFIC, INC.

ARTICLE I

The name of the corporation shall be "NetTraffic, Inc." (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 15 East North Street, in the City of Dover, Kent County, Delaware 19901. The name of its registered agent at such address is Incorporating Services, Ltd.

ARTICLE III

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

ARTICLE IV

Upon the filing of this Certificate of Amendment, every ten (10) shares of Common Stock and Preferred Stock outstanding shall be combined into one (1) share of Common Stock and Preferred Stock, respectively; provided, however, that the Corporation shall issue no fractional shares, but shall instead pay to any stockholder who would be entitled to receive a fractional share as a result of the actions set forth herein a sum in cash equal to the fair market value of such fractional share.

The Corporation shall have the authority to issue 55,000,000 shares of capital stock, \$0.0001 par value per share, of which: (1) 33,500,000 shall be designated Common Stock (the "Common Stock"), 30,000,000 of which shall be designated Series A Common Stock (the "Series A Common Stock") and 3,500,000 of which shall be designated Series B Common Stock (the "Series B Common Stock"); and (2) 21,500,000 shall be designated Preferred Stock (the "Preferred Stock"), 2,500,000 of which shall be designated Series A Preferred Stock (the "Series A Preferred Stock"), 16,000,000 of which shall be designated Series B Preferred Stock (the "Series B Preferred Stock") and 3,000,000 of which shall be designated Series C Preferred Stock (the "Series C Preferred Stock"). The Common and Preferred Stock shall have the rights, preferences, privileges and restrictions set forth below in Article V.

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The Corporation shall have the authority to issue 55,000,000 shares of capital stock, \$0.0001 par value per share, of which: (1) 33,500,000 shall be designated Common Stock (the "Common Stock"), 30,000,000 of which shall be designated Series A Common Stock (the "Series A Common Stock") and 3,500,000 of which shall be designated Series B Common Stock (the "Series B Common Stock"); and (2) 21,500,000 shall be designated Preferred Stock (the "Preferred Stock"), 2,500,000 of which shall be designated Series A Preferred Stock (the "Series A Preferred Stock"), 16,000,000 of which shall be designated Series B Preferred Stock (the "Series B Preferred Stock") and 3,000,000 of which shall be designated Series C Preferred Stock (the "Series C Preferred Stock"). The Common and Preferred Stock shall have the rights, preferences, privileges and restrictions set forth below in Article V.

## ARTICLE V

The Board of Directors, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, may increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series subsequent to the issue of shares of that series.

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

### A. Dividends.

The holders of the Preferred Stock shall be entitled to dividends when, as and if declared by the Board of Directors, consistent with Delaware law, out of any assets of the Corporation legally available for that purpose, on each outstanding share of Preferred Stock, prior and in preference to any declaration or payment of any dividend or other distribution on any other class or series of the Corporation's capital stock. With respect to the declaration, payment and setting apart of dividends, other than in Common Stock, the holders of Preferred Stock shall be entitled to participate with the Common Stock and receive, before any dividends shall be declared and paid upon or set aside for the Common Stock, the same dividends or distributions, on an as-converted basis, as are proposed to be distributed to the holders of Common Stock. Each share of Preferred Stock shall be treated for purposes of such participation as being equal to the number of shares of Common Stock (which may be a fraction) into which such share could then be converted.

### B. Preference on Liquidation.

1. Upon the occurrence of any Liquidating Event (as defined below), each holder of Series C Preferred Stock then outstanding shall be entitled to receive, out of any assets of the Corporation available for distribution to its stockholders, before any payment shall be made in respect of the Corporation's Common Stock or any other series of Preferred Stock, a ratable distribution of the Corporation's assets and surplus funds until the holders of Series C Preferred Stock receive an aggregate amount of \$5.14914 per share (as adjusted for stock splits, stock dividends, reclassifications and the like) for each share of Series C Preferred Stock then held by them, plus all declared but unpaid dividends (the "Series C Preference Amount"). If, upon the occurrence of a Liquidating Event, the assets and funds distributed among the holders of Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid Series C Preference Amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series C Preferred Stock. If the holders of Series C Preferred Stock would receive, pursuant to B.4 below, an amount greater than the Series C Preference Amount had they converted the Series C Preferred Stock into Common Stock immediately prior to the Liquidating Event, they shall receive that greater amount instead.

2. Upon the occurrence of any Liquidating Event (as defined below), each holder of Series B Preferred Stock then outstanding shall be entitled to receive, out of any assets of the Corporation available for distribution to its stockholders, after payment in full of the Series

C Preference Amount but before any payment shall be made in respect of the Corporation's Common Stock or any other series of Preferred Stock other than the Series C Preferred Stock, a ratable distribution of the Corporation's assets and surplus funds until the holders of Series B Preferred Stock receive an aggregate amount of \$3.43276 per share (as adjusted for stock splits, stock dividends, reclassifications and the like) for each share of Series B Preferred Stock then held by them, plus all declared but unpaid dividends (the "Series B Preference Amount"). If, upon the occurrence of a Liquidating Event, the assets and funds distributed among the holders of Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid Series B Preference Amount, 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 Stock. If the holders of Series B Preferred Stock would receive, pursuant to B.4 below, an amount greater than the Series B Preference Amount had they converted the Series B Preferred Stock into Common Stock immediately prior to the Liquidating Event, they shall receive that greater amount instead.

3. Upon the occurrence of any Liquidating Event (as defined below), each holder of Series A Preferred Stock then outstanding shall be entitled to receive, out of any assets of the Corporation available for distribution to its stockholders, after payment in full of the Series C Preference Amount and the Series B Preference Amount but before any payment shall be made in respect of the Corporation's Common Stock, a ratable distribution of the Corporation's assets and surplus funds until the holders of Series A Preferred Stock receive an aggregate amount of \$1.287 per share (as adjusted for stock splits, stock dividends, reclassifications and the like) for each share of Series A Preferred Stock then held by them, plus all declared but unpaid dividends (the "Series A Preference Amount"). If, upon the occurrence of a Liquidating Event, the assets and funds distributed among the holders of Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid Series A Preference Amount, 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 Stock. If the holders of Series A Preferred Stock would receive, pursuant to B.3 below, an amount greater than the Series A Preference Amount had they converted the Series A Preferred Stock into Common Stock immediately prior to the Liquidating Event, they shall receive that greater amount instead.

4. After payment has been made to the holders of the Preferred Stock of the full Preference Amounts to which they shall be entitled as aforesaid, any remaining assets of the Corporation legally available for distribution, if any, shall be distributed ratably among the holders of the Corporation's Common Stock, Series C Preferred Stock and Series B Preferred Stock on an as-converted basis.

5. A "Liquidating Event" shall mean (a) any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, or (b) a sale, transfer or other disposition of all or substantially all the assets of the Corporation to, or a merger or consolidation into, an entity that is not controlled, directly or indirectly, by the stockholders of the Corporation; for purposes of this definition, "control" shall mean ownership of more than 50% of the voting power of an entity; provided, however, if the holders of a majority of the shares of Preferred Stock so elect by giving written notice to the Corporation before the effective date of a merger or consolidation that would otherwise be a Liquidating Event as defined herein, such merger or consolidation shall not be deemed a Liquidating Event and the provisions of Article V, Section



D.7 shall apply. Upon the occurrence of any Liquidating Event that would involve the distribution of assets other than cash with respect to the outstanding shares of Preferred Stock, the amount of such distribution shall be deemed to be the fair market value thereof at the time of such distribution as determined in good faith by the Board of Directors, and any securities to be distributed in such event shall be valued as follows:

(i) For those securities not subject to investment letter or other similar restrictions on free marketability covered by subsection (ii) hereof

(A) if traded on a securities exchange or through the Nasdaq National Market ("Nasdaq"), the value shall be based on a formula approved by the Board of Directors and derived from the closing prices of the securities on such exchange or Nasdaq over a specified time period,

(B) if actively traded over-the-counter, the value shall be based on a formula approved by the Board of Directors and derived from the closing bid or sales prices (whichever is applicable) of such securities over a specified time period, and

(C) if there is no active public market, the value shall be the fair market value thereof, as reasonably determined by the Board of Directors in good faith; and

(ii) 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 provided in clauses (A), (B) or (C) of subsection (i) hereof, to reflect the adjusted fair market value thereof, as reasonably determined by the Board of Directors in good faith.

### C. Voting.

1. General Rights. Except as otherwise expressly provided herein or as required by law, the holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Series A Common Stock into which such share of Preferred Stock could then be converted and shall have voting rights and powers equal to the voting rights and powers of the Series A Common Stock (except as otherwise expressly provided herein or as required by law, voting together with the Series A Common Stock as a single class) and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares of Series A Common Stock 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). Each holder of Series A Common Stock shall have the right to one vote per share of Series A Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. The Series B Common Stock shall have no voting rights, except as required by law.

2. Protective Provisions.

(a) Series A Preferred Stock. In addition to any other rights provided by law or as set forth in this Certificate of Incorporation, so long as any shares of Series A Preferred Stock shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the then outstanding shares of the Series A Preferred Stock, consenting or voting separately as a class:

(i) increase or decrease (other than by redemption or conversion, unless provided otherwise herein) the total number of authorized shares of Series A Preferred Stock;

(ii) authorize or issue, or obligate itself to issue, any new or existing class or classes or series of capital stock having any preference or priority as to dividends, liquidation, conversion, registration rights, voting or assets superior to or on a parity with any such preference or priority of the Series A Preferred Stock, or authorize or issue, or obligate itself to issue, shares of stock of any class or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any shares of stock of the Corporation having any preference or priority as to dividends, liquidation, conversion, registration rights, voting or assets superior to or on a parity with any such preference or priority of the Series A Preferred Stock;

(iii) reclassify any Common Stock into shares having any preference or priority as to dividends, liquidation, conversion, registration rights, voting or assets superior to or on a parity with any such preference or priority of the Series A Preferred Stock;

(iv) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock, or amend or repeal any provision of, or add any provision to, the Corporation's Certificate of Incorporation or Bylaws, whether by merger, consolidation or otherwise;

(v) change the number of authorized directors of the Corporation;

(vi) pay or declare any dividend or distribution on any shares of its capital stock (other than on the Series A Preferred Stock or payable in shares of Common 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, except for repurchases of shares from former employees upon termination of employment pursuant to the terms of such former employees' stock purchase agreements providing for such repurchases at the original issuance prices for such shares; or

(vii) effect a Liquidating Event.

(b) Series B Preferred Stock. In addition to any other rights provided by law or as set forth in this Certificate of Incorporation, so long as any shares of Series B Preferred Stock shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the then outstanding shares of the Series B Preferred Stock, consenting or voting separately as a class:

(i) increase or decrease (other than by redemption or conversion, unless provided otherwise herein) the total number of authorized shares of Series B Preferred Stock;

(ii) authorize or issue, or obligate itself to issue, any new or existing class or classes or series of capital stock having any preference or priority as to dividends, liquidation, conversion, registration rights, voting or assets superior to or on a parity with any such preference or priority of the Series B Preferred Stock, or authorize or issue, or obligate itself to issue, shares of stock of any class or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any shares of stock of the Corporation having any preference or priority as to dividends, liquidation, conversion, registration rights, voting or assets superior to or on a parity with any such preference or priority of the Series B Preferred Stock;

(iii) reclassify any Common Stock into shares having any preference or priority as to dividends, liquidation, conversion, registration rights, voting or assets superior to or on a parity with any such preference or priority of the Series B Preferred Stock;

(iv) alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock, or amend or repeal any provision of, or add any provision to, the Corporation's Certificate of Incorporation or Bylaws, whether by merger, consolidation or otherwise;

(v) change the number of authorized directors of the Corporation;

(vi) pay or declare any dividend or distribution on any shares of its capital stock (other than on the Series B Preferred Stock or payable in shares of Common 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, except for repurchases of shares from former employees upon termination of employment pursuant to the terms of such former employees' stock purchase agreements providing for such repurchases at the original issuance prices for such shares; or

(vii) effect a Liquidating Event.

(c) Series C Preferred Stock. In addition to any other rights provided by law or as set forth in this Certificate of Incorporation, so long as any shares of Series C Preferred Stock shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the then outstanding shares of the Series C Preferred Stock, consenting or voting separately as a class:

(i) increase or decrease (other than by redemption or conversion, unless provided otherwise herein) the total number of authorized shares of Series C Preferred Stock;

(ii) authorize or issue, or obligate itself to issue, any new or existing class or classes or series of capital stock having any preference or priority as to dividends, liquidation, conversion, registration rights, voting or assets superior to or on a parity with any such preference or priority of the Series C Preferred Stock, or authorize or issue, or obligate itself to issue, shares of stock of any class or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any shares of stock of the Corporation having any preference or priority as to dividends, liquidation, conversion, registration rights, voting or assets superior to or on a parity with any such preference or priority of the Series C Preferred Stock;

(iii) reclassify any Common Stock into shares having any preference or priority as to dividends, liquidation, conversion, registration rights, voting or assets superior to or on a parity with any such preference or priority of the Series C Preferred Stock;

(iv) alter or change the rights, preferences or privileges of the shares of Series C Preferred Stock, or amend or repeal any provision of, or add any provision to, the Corporation's Certificate of Incorporation or Bylaws, whether by merger, consolidation or otherwise;

(v) change the number of authorized directors of the Corporation;

(vi) pay or declare any dividend or distribution on any shares of its capital stock (other than on the Series C Preferred Stock or payable in shares of Common 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, except for repurchases of shares from former employees upon termination of employment pursuant to the terms of such former employees' stock purchase agreements providing for such repurchases at the original issuance prices for such shares; or

(vii) effect a Liquidating Event.

3. Election of Directors. The number of directors of the Corporation shall be set in accordance with the Corporation's Bylaws. At each meeting of the stockholders or of the Board of Directors held for the election of directors, or upon the taking of a written consent of stockholders or of the Board of Directors for such purpose: (a) the holders of outstanding Series A Preferred Stock, voting together as a single class, shall be entitled to elect one (1) member of the

Board of Directors; (b) the holders of outstanding Series B Preferred Stock shall be entitled, voting as a separate class, to elect two (2) members of the Board of Directors of the Corporation; (c) the holders of outstanding Series C Preferred Stock, voting together as a single class, shall be entitled to elect one (1) member of the Board of Directors; and (d) any other directors(s) shall be elected by the holders of all outstanding voting capital stock, voting together as a single class on an as-converted into Series A Common Stock basis. In the case of any vacancy (other than a vacancy caused by removal by vote of the stockholders in accordance with applicable law) in the office of a director occurring among the directors elected by the holders of a class of stock (if any) pursuant to this Section C.3, the remaining directors so elected by that class may, by affirmative vote of a majority thereof (or the remaining director so elected if there be but one, or if there are no such directors remaining, by the affirmative vote of the holders of a majority of the shares of that class), elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of a class of stock (if any) or by any directors so elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class of stock entitled to elect such director or directors as provided in the Bylaws of the Corporation, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class of stock represented at a meeting or pursuant to written consent.

D. Conversion Rights.

Each share of Preferred Stock shall be convertible at the option of the holder thereof, at any time after the issuance of such share, into fully paid and nonassessable shares of Series A Common Stock of the Corporation. The number of shares of Series A Common Stock into which each share of the Series A Preferred Stock may be converted shall be determined by dividing \$1.287, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares after the filing hereof (the "Series A Original Price"), by the Series A Conversion Price (determined as hereinafter provided) in effect at the time of the conversion. The number of shares of Series A Common Stock into which each share of the Series B Preferred Stock may be converted shall be determined by dividing \$1.71638, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares after the filing hereof (the "Series B Original Price"), by the Series B Conversion Price (determined as hereinafter provided) in effect at the time of the conversion. The number of shares of Series A Common Stock into which each share of the Series C Preferred Stock may be converted shall be determined by dividing \$1.71638, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares after the filing hereof (the "Series C Original Price"), by the Series C Conversion Price (determined as hereinafter provided) in effect at the time of the conversion. The Series A Conversion Price, the Series B Conversion Price, and the Series C Conversion Price are sometimes hereinafter also referred to as the "Conversion Prices."

1. Conversion Prices. Before any adjustment is required pursuant to Section E hereof, the Series A Conversion Price shall be equal to the Series A Original Price, the Series

B Conversion Price shall be equal to the Series B Original Price and the Series C Conversion Price shall be equal to the Series C Original Price.

2. Mechanics of Conversion. The holder of any shares of Preferred Stock may exercise the conversion rights as to such shares or any part thereof by delivering to the Corporation during regular business hours, at the office of any transfer agent of the Corporation for the Preferred Stock, or at the principal office of the Corporation or at such other place as may be designated by the Corporation, the certificate or certificates for the shares to be converted, duly endorsed for transfer to the Corporation or accompanied by a written instrument or instruments of transfer (if required by it), accompanied by written notice stating that the holder elects to convert all or a number of such shares represented by the certificate or certificates. Such notice shall also state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Series A Common Stock to be issued. Conversion shall be deemed to have been effected on the date when such delivery is made, and such date is referred to herein as the "Conversion Date." As promptly as practicable thereafter the Corporation shall issue and deliver to such holder, at such office or other place designated by the Corporation, a certificate or certificates for the number of full shares of Series A Common Stock to which such holder is entitled and a check for cash with respect to any fractional interest in a share of Series A Common Stock as provided in Article V, Section D.3. The holder shall be deemed to have become a stockholder of record on the applicable Conversion Date. Upon conversion of only a portion of the number of shares of Preferred Stock represented by a certificate surrendered for conversion, the Corporation shall issue and deliver to the holder of the certificate so surrendered for conversion, at the expense of the Corporation, a new certificate covering the number of shares of Preferred Stock representing the unconverted portion of the certificate so surrendered.

3. Fractional Shares. No fractional shares of Series A Common Stock or scrip shall be issued upon conversion of shares of Preferred Stock. If more than one share of Preferred Stock shall be surrendered for conversion at any one time by the same holder, the number of full shares of Series A Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Preferred Stock so surrendered. Instead of any fractional shares of Series A Common Stock that would otherwise be issuable upon conversion of any shares of Preferred Stock, the Corporation shall pay a cash adjustment in respect of such fractional interest equal to the fair market value of such fractional interest as determined in good faith by the Corporation's Board of Directors.

4. Payment of Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Series A Common Stock on conversion of Preferred Stock pursuant hereto. The Corporation shall not, however, be required to pay any tax that may be payable in respect of any transfer involved in the issue and delivery of shares of Series A Common Stock in a name other than that in which the Preferred Stock so converted was registered, and no such issue or delivery shall be made unless and until the person requesting such issue 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.

5. Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available, out of its authorized but unissued Series A Common

Stock, solely for the purpose of effecting the conversion of Preferred Stock, the full number of shares of Series A Common Stock deliverable upon the conversion of all Preferred Stock from time to time outstanding. The Corporation shall from time to time use its best effort to obtain necessary director and stockholder approvals, in accordance with the laws of the State of Delaware, to increase the authorized amount of its Series A Common Stock if at any time the authorized amount of its Series A Common Stock remaining unissued shall not be sufficient to permit the conversion of all of the shares of Preferred Stock at the time outstanding, and shall take all such actions as are necessary to increase such authorized amount of Series A Common Stock upon obtaining such approvals. Before taking any action that would cause an adjustment reducing a Conversion Price below the then-par value of the shares of Series A Common Stock issuable upon the conversion of Preferred Stock, the Corporation will take any corporate action that 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 Series A Common Stock at such adjusted Conversion Price.

6. Adjustment for Reclassification, Exchange and Substitution. If the Series A Common Stock issuable upon the conversion of Preferred Stock shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for in Article V, Section E.1), then and in each such event the holder of each share of Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification, or other change, by holders of the number of shares of Series A Common Stock into which such shares of Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change.

7. Reorganizations, Mergers or Consolidations. In case of any consolidation or merger of the Corporation with or into another corporation or the sale of all or substantially all of the assets of the Corporation to another corporation (other than a consolidation, merger or sale treated as a Liquidating Event pursuant to Article V, Section B.3), each share of Preferred Stock shall thereafter be convertible into the kind and amount of shares of stock or other securities or property that a holder of the number of shares of Series A Common Stock of the Corporation deliverable upon conversion of such Preferred Stock would have been entitled upon such consolidation, merger or sale; 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 of Article V, Sections D and E with respect to the rights and interest thereafter of the holders of Preferred Stock, to the end that the provisions set forth in Article V, Sections D and E 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 such Preferred Stock.

8. Listing of Shares Issuable Upon Conversion. If any shares of Series A Common Stock to be reserved for the purpose of conversion of shares of Preferred Stock require registration or listing with, or approval of, any governmental authority, stock exchange or other regulatory body under any federal or state law or regulation or otherwise, before such shares may be validly issued or delivered upon conversion, the Corporation will in good faith and as expeditiously as possible endeavor to secure such registration, listing or approval, as the case may be.

9. Valid Issuance. All shares of Series A Common Stock that may be issued upon conversion of the shares of Preferred Stock will upon issuance by the Corporation be validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issuance thereof.

10. No Dilution or 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 of the provisions of Article V, Sections D and E and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against impairment.

E. Adjustment of Conversion Prices.

The Conversion Prices from time to time in effect shall be subject to adjustment from time to time as follows.

1. Stock Splits, Dividends and Combinations. In case the Corporation shall at any time subdivide the outstanding shares of Common Stock or shall issue a dividend in Common Stock on its outstanding Common Stock without a corresponding subdivision of or dividend on a series of Preferred Stock, the Conversion Price for such series of Preferred Stock in effect immediately prior to such subdivision or the issuance of such dividend shall be proportionately decreased, and in case the Corporation shall at any time combine the outstanding shares of Common Stock into a lesser number of shares of Common Stock without a corresponding combination of a series of Preferred Stock, the Conversion Price for such series of Preferred Stock in effect immediately prior to such combination shall be proportionately increased, concurrently with the effectiveness of such subdivision, dividend or combination, as the case may be.

2. Noncash Dividends, Stock Purchase Rights, Capital Reorganizations and Dissolutions. In case:

(a) the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or any other distribution, payable otherwise than in cash; or

(b) the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them to subscribe for or purchase any shares of stock of any class or to receive any other rights; or

(c) of any capital reorganization of the Corporation, reclassification of the capital stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock), consolidation or merger of the Corporation with or into another Corporation that is not a Liquidating Event or conveyance of all or substantially all of the assets of the Corporation to another corporation that is not a Liquidating Event;



then, and in any such case, the Corporation shall cause to be mailed to the transfer agent for the Preferred Stock and to the holders of record of the outstanding Preferred Stock, at least 10 days prior to the date hereinafter specified, a notice stating the date on which (i) a record is to be taken for the purpose of such dividend, distribution or rights, or (ii) such reclassification, reorganization, consolidation, merger, conveyance, dissolution, liquidation or winding up is to take place and the date, if any is to be fixed, as of which holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, reorganization, consolidation, merger, conveyance, dissolution, liquidation or winding up.

3. Issuances at Less Than the Conversion Price. Upon the issuance or sale by the Corporation of:

(a) Common Stock for a consideration per share less than any Conversion Price in effect immediately prior to the time of such issue or sale; or

(b) any Stock Purchase Rights where the consideration per share for which shares of Common Stock may at any time thereafter be issuable upon exercise thereof (or, in the case of Stock Purchase Rights exercisable for the purchase of Convertible Securities, upon the subsequent conversion or exchange of such Convertible Securities) shall be less than any Conversion Price in effect immediately prior to the time of the issue or sale of such Stock Purchase Rights; or

(c) any Convertible Securities where the consideration per share for which shares of Common Stock may at any time thereafter be issuable pursuant to the terms of such Convertible Securities shall be less than any Conversion Price in effect immediately prior to the time of the issue or sale of such Convertible Securities;

other than an issuance of Common Stock pursuant to Article V, Sections E.1 or E.6 hereof (any such issuance shall be referred to hereinafter as a "Dilutive Issuance"), then forthwith upon such issue or sale, such Conversion Price shall be reduced concurrently with such issue in order to increase the number of shares of Common Stock into which such series of Preferred Stock is convertible to a price (calculated to the nearest cent) determined by the following formula:

$$CP^1 = CP * \frac{N + C}{N + AS}$$

where:

CP<sup>1</sup> = the Conversion Price as so adjusted;

CP = the former Conversion Price immediately prior to the Dilutive Issuance;

N = the number of shares of Common Stock outstanding immediately prior to such issuance (or deemed issuance) assuming exercise or conversion of all outstanding securities exercisable for or convertible into Common Stock;

- C = the number of shares of Common Stock that the aggregate consideration received or deemed to be received by the Corporation for the total number of additional securities so issued or deemed to be issued would purchase if the purchase price per share were equal to the then existing Conversion Price;
- AS = the number of shares of Common Stock so issued or deemed to be issued.

Notwithstanding the foregoing, no Conversion Price shall at such time be reduced if such reduction would be an amount less than \$0.01, but any such amount shall be carried forward and deduction with respect thereto made at the time of and together with any subsequent reduction that, together with such amount and any other amount or amounts so carried forward, shall aggregate \$0.01 or more.

4. Defined Terms. For purposes of this Section E, the following provisions will be applicable.

(a) "Convertible Securities" shall mean evidences of indebtedness, shares of stock (including, without limitation, the Preferred Stock) or other securities that are convertible into or exchangeable for, with or without payment of additional consideration, shares of Common Stock.

(b) "Stock Purchase Rights" shall mean any warrants, options or other rights to subscribe for, purchase or otherwise acquire any shares of Common Stock or any Convertible Securities.

(c) Convertible Securities and Stock Purchase Rights shall be deemed outstanding and issued or sold at the time of such issue or sale.

5. Determination of Consideration. The "consideration actually received" by the Corporation for the issuance, sale, grant or assumption of shares of Common Stock, Stock Purchase Rights or Convertible Securities, irrespective of the accounting treatment of such consideration, shall be valued as follows:

(a) in the case of cash, the net amount received by the Corporation after deduction of any accrued interest or dividends and before deducting any expenses paid or incurred and any underwriting commissions or concessions paid or allowed by the Corporation in connection with such issue or sale;

(b) in the case of consideration other than cash, the value of such consideration, which shall not include the value of any Convertible Securities being converted or exchanged, as determined by the Board of Directors in good faith, after deducting any accrued interest or dividends; and

(c) with respect to the issuance of Stock Purchase Rights and Convertible Securities, the total consideration, if any, received by the Corporation as consideration for the issuance of the Stock Purchase Rights or the Convertible Securities, as the

case may be, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the exercise of such Stock Purchase Rights or upon the conversion or exchange of such Convertible Securities, as the case may be, in each case after deducting any accrued interest or dividends.

In the event of any change in (i) the consideration, if any, payable upon exercise of any Stock Purchase Rights or upon the conversion or exchange of any Convertible Securities, or (ii) the rate at which any Convertible Securities are convertible into or exchangeable for shares of Common Stock, the Conversion Price as computed upon the original issue thereof shall forthwith be readjusted to the Conversion Price that would have been in effect at such time had such Stock Purchase Rights or Convertible Securities provided for such changed purchase price, consideration or conversion rate, as the case may be, at the time initially granted, issued or sold. On the expiration of any Stock Purchase Rights not exercised or of any right to convert or exchange under any Convertible Securities not exercised, the Conversion Price then in effect shall forthwith be increased to the Conversion Price that would have been in effect at the time of such expiration had such Stock Purchase Rights or Convertible Securities never been issued. No readjustment of the Conversion Price pursuant to this paragraph shall (A) increase the Conversion Price by an amount in excess of the adjustment originally made to the Conversion Price in respect of the issue, sale or grant of the applicable Stock Purchase Rights or Convertible Securities, or (B) require any adjustment to the amount paid or number of shares of Common Stock received by any holder of Preferred Stock upon any conversion of any share of Preferred Stock prior to the date upon which such readjustment to the Conversion Price shall occur.

6. Exclusions for Adjustment for Issuances at Less Than the Conversion Price. Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of any Conversion Price in the case of: (a) the issuance or sale of shares or options to purchase shares, or a combination of both, of the Corporation's capital stock at a price per share less than any Conversion Price, subject to adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization, to directors, officers, employees or consultants of the Corporation pursuant to stock options or stock purchase plans or agreements approved by the Board of Directors; (b) the issuance of Common Stock upon conversion of the Preferred Stock; (c) the issuance of securities in connection with strategic or collaborative relationships or for lending transactions that have been approved by the Board of Directors; (d) the issuance of securities solely in connection with the acquisition (whether by merger or otherwise) by the Corporation of all or substantially all of the capital stock or assets of any other entity or business organization, that have been approved by the Board of Directors; and (e) the issuance or sale of shares or options to purchase such shares to the extent the holders of a majority of the then outstanding shares of the relevant series of Preferred Stock waive the right to an adjustment pursuant to Article V, Section E.3. The issuances or sales described in this Section E.6 shall be ignored for purposes of calculating any adjustment to any Conversion Price.

7. Certificate of Adjustment. Upon the occurrence of each adjustment or readjustment of a Conversion Price pursuant to this Section E, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms thereof, and prepare and furnish to each holder of Preferred Stock affected thereby 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 notice at any time

of any holder of Preferred Stock furnish or cause to be furnished to such holder a like certificate setting forth (a) such adjustment or readjustment, (b) the Conversion Price at the time in effect, and (c) the number of shares of Series A Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of such holder's shares.

F. Mandatory Conversion.

Each share of Preferred Stock and of Series B Common Stock shall automatically be converted into shares of Series A Common Stock at the then applicable conversion rate (which for the Series B Common Stock shall be 1-for-1, adjusted for any splits or the like affecting one series of Common Stock and not the other) upon the occurrence of a closing of an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Series A Common Stock of the Corporation to the public with gross proceeds of \$20,000,000 or more, and the price per share to the public is not less than four times the Series B Original Price, subject to adjustment in the event of any stock dividends, stock splits or the like (a "Qualified Public Offering").

In addition, each share of Preferred Stock and of Series B Common Stock shall automatically be converted into shares of Series A Common Stock at the then applicable conversion rate upon the affirmative vote of the holders of at least a majority of the outstanding shares of Preferred Stock, voting together as a single class. The mechanics for conversion and other provisions relating to conversion of Preferred Stock and of Series B Common Stock into Series A Common Stock set forth elsewhere in this Certificate of Incorporation shall apply to the mandatory conversion of the Preferred Stock and of Series B Common Stock.

ARTICLE VI

The number of directors of the Corporation, which constitute the whole Board of Directors of the Corporation, may be fixed by the Bylaws of the Corporation. Elections of directors may be, but shall not be required to be, by written ballot.

ARTICLE VII

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors of the Corporation is expressly authorized to make, alter and repeal the Bylaws of the Corporation, subject to the power of the stockholders of the Corporation to alter or repeal any bylaw whether adopted by them or otherwise.

ARTICLE VIII

The Corporation is to have perpetual existence.

## ARTICLE IX

The number of authorized shares of Common Stock, and/or of any Series thereof, may be increased or decreased (but not below the number of shares then outstanding) by an affirmative vote of the holders of a majority of the outstanding voting capital stock of the Corporation (voting on an as-if-converted basis).

## ARTICLE X

To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, no present or former director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Neither any amendment nor repeal of this Article, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

## ARTICLE XI

The Corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to, or testifies in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative in nature, by reason of the fact such person is or was a director, officer or employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding to the full extent permitted by law, and the Corporation may adopt bylaws or enter into agreements with any such person for the purpose of providing for such indemnification.

## ARTICLE XII

The Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this Article.

ARTICLE XIII

All provisions relating to any exchange, reclassification or cancellation of issued shares are set forth in this Certificate of Incorporation.

ARTICLE XIV

Any shares of Preferred Stock redeemed, purchased, converted or otherwise acquired by the Corporation shall be deemed retired and shall be cancelled and may not under any circumstances thereafter be reissued or otherwise disposed of by the Corporation.