

TRADEMARKS ONLY



TRADEMARKS ONLY

of Patents and Trademarks document or copy thereof.

101669593

1. Name of Party(ies) conveying an interest:

Bioweb, Inc.

Entity:

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

3. Interest Conveyed:

- Assignment     Change of Name
- Security Agreement     Merger
- Other Merger and Change of Name

Execution Date:

August 4, 2000

2. Name and Address of Party(ies) receiving an interest:

Name: **Labvelocity, Inc.**

Address: **50 Francisco Street  
San Francisco, CA 94113-2107**

Entity:

- Individual(s)                     Association
- Corporation-State - **Delaware**     General Partnership             Limited Partnership
- Other: Company

Citizenship:

If not domiciled in the United States, a domestic representative designation is attached:

- Yes
- No

(The attached document must **not** be an assignment)

4. Application number(s) or registration number(s). Additional sheet attached?                     Yes     No

A. Trademark Application No.(s)

76/078,782

B. Trademark Registration No.(s)

5. Please mail documents back to:

Calendar/Docketing Dept.  
Pillsbury Winthrop LLP  
Post Office Box 7880  
San Francisco, CA 94120

6. Number of applications and registrations involved: 1

7. Amount of fee enclosed: \$ 40.00

8. If above amount is missing or inadequate, charge deficiency to our Deposit Account No. 03-3975 under Order No. 009915-026-9128/RLK/JMG/SLT.

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

04/04/2001 TDIAZ1 00000045 76078782

01 FC:481 40.00 DP

Signature

Attorney: **J. Matthew Gowdy**

Date: **March 13, 2001**

Atty/Sec: Attorney

Total number of pages including cover sheet, attachments and document. (excluding duplicate cover sheet)

21

Tel: (415) 983-1255

Fax: (415) 983-1200

*State of Delaware*  
*Office of the Secretary of State*

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PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "BIOWEB, INC.", CHANGING ITS NAME FROM "BIOWEB, INC." TO "LABVELOCITY, INC.", FILED IN THIS OFFICE ON THE FOURTH DAY OF AUGUST, A.D. 2000, AT 3:30 O'CLOCK P.M.



*Harriet Smith Windsor*

*Secretary of State*

3158163 8100

010020591

AUTHENTICATION: 0913310

DATE: 01-12-01

TRADEMARK  
REEL: 002264 FRAME: 0158

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**BIOWEB, INC.**

BioWeb, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

ONE: The name of the corporation is BioWeb, Inc..

TWO: The original Certificate of Incorporation was filed with the Secretary of State of Delaware on January 12, 2000, under the name of BioWeb (Delaware), Inc.

THREE: The Certificate of Incorporation of said corporation shall be amended and restated to read in full as follows:

**ARTICLE I**

The name of the corporation is *LabVelocity, Inc.*

**ARTICLE II**

The address of the registered office of the corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the registered agent at such address is The Corporation Trust Company.

**ARTICLE III**

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

**ARTICLE IV**

A. Classes of Stock. The total number of shares of all classes of capital stock which this corporation shall have authority to issue is Thirty-Seven Million Two Hundred Thousand (37,200,000) of which Twenty Million (22,000,000) shares shall be Common Stock, with par value of One-Hundredth of One Cent (\$0.01), (the "Common Stock") and Fifteen Million Two Hundred Thousand (15,200,000) shares shall be Preferred Stock, with a par value of One-Hundredth of One Cent (\$0.01), (the "Preferred Stock").

B. Rights Preferences and Restrictions of the Preferred Stock. The Series A Preferred Stock shall consist of 7,200,000 shares. The Series B Preferred Stock shall consist of 8,000,000 shares. The Series A Preferred Stock and Series B Preferred Stock shall have the respective voting power, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, as follows:

1. Dividend Provisions.

(a) The holders of shares of Series A Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock of this corporation) on the Common Stock or any other junior equity security of this corporation, at the rate of \$0.05 per share of Series A Preferred Stock (as adjusted for any stock splits, stock dividends, recapitalizations and the like) per annum, payable quarterly when, as and if declared by the Board of Directors. The holders of shares of Series B Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock of this corporation) on the Common Stock or any other junior equity security of this corporation, at the rate of \$.15 per share of Series B Preferred Stock (as adjusted for any stock splits, stock dividends, recapitalizations and the like) per annum, payable quarterly when, as and if declared by the Board of Directors. Dividends shall not be cumulative. Dividends, if declared, must be declared and paid with respect to all series of Preferred Stock contemporaneously, and if less than full dividends are declared, the same percentage of the dividend rate will be payable to each series of Preferred Stock.

(b) Any dividends or distributions that are proposed to be made with respect to the Common Stock shall be distributed pro rata, based upon the number of shares of Common Stock held by each, among the holders of Common Stock and the holders of Series A Preferred Stock and Series B Preferred Stock (on an as-converted to Common Stock basis).

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this corporation, either voluntary or involuntary, the holders of Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this corporation to the holders of Common Stock or other junior equity security by reason of their ownership thereof, an amount per share equal to the sum of (i) \$0.50 for each outstanding share of Series A Preferred Stock (the "Original Series A Issue Price"), (ii) \$1.50 for each outstanding share of Series B Preferred Stock (the "Original Series B Issue Price") and (iii) an amount equal to all declared but unpaid dividends on each such share (as adjusted for any stock dividends, combinations or stock splits with respect to such shares). If upon the occurrence of such event, the assets and funds thus distributed among the holders of Series A Preferred Stock and Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of this corporation legally available for distribution shall be distributed ratably among the holders of Series A Preferred Stock and Series B Preferred Stock in proportion to the product of the liquidation preference of each such share and the number of shares held by each such holder.

(b) After the distributions described in subsection (a) above have been paid, the remaining assets of this corporation available for distribution to stockholders shall be distributed pro rata, based upon the number of shares of Common Stock held by each, among the holders of Common Stock and the holders of Series A Preferred Stock and Series B Preferred Stock (on an as-converted to Common Stock basis); provided, however, that the holders of Series A Preferred Stock or Series B Preferred Stock, as the case may be, who shall have received aggregate distributions pursuant to Section B.2(a) and (b) equal to \$3.00 per share of such series of Preferred Stock as adjusted for any stock dividends, combinations or stock splits (the "Maximum Liquidation Amount") shall not participate in the further distribution of remaining assets of the corporation. Thereafter, all such remaining consideration available for distribution to the stockholders shall be distributed pro rata, based upon the number of shares of Common Stock held by each (on an as-converted to Common Stock basis), among the holders of Common Stock and the holders of Preferred Stock, if any, who have not received the Maximum Liquidation Amount.

(c) A liquidation, dissolution or winding up of this corporation shall be deemed to be occasioned by, or to include (unless the holders of a majority of the Series A Preferred Stock and Series B Preferred Stock then outstanding, voting together as a single class, shall determine otherwise), (A) the acquisition of this corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) that results in the transfer of fifty percent (50%) or more of the outstanding voting power of this corporation, or (B) a sale, lease or other disposition of all or substantially all of the assets of this corporation (each, a "Deemed Liquidation Event").

(d) Any securities to be delivered to the holders of Preferred Stock and Common Stock pursuant to this Section B.2 shall be valued as follows:

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

(A) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three days prior to the closing;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices over the 30-day period ending three days prior to the closing; and

(C) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors of this corporation.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in (i)(A), (B) or (C) to reflect the approximate fair market value thereof, as mutually determined by the Board of Directors of this corporation.

(e) In the event the requirements of this Section B.2 are not complied with, this corporation shall forthwith either:

(i) cause such closing to be postponed until such time as the requirements of this Section B.2 have been complied with, or

(ii) 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 subsection B.2(g) hereof.

(f) This corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than 20 days prior to the stockholders' meeting called to approve such transaction, or 20 days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section B.2, and this corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place earlier than 20 days after this corporation has given the first notice provided for herein or earlier than ten days after this 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 a majority of the shares of the Preferred Stock then outstanding.

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

(a) Right To Convert. Subject to subsection (d) below, each share of Series A Preferred Stock and Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of this corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series A Issue Price or Original Series B Issue Price, as the case may be, by the Conversion Price for such series of Preferred Stock in effect on the date the certificate for such share is surrendered for conversion. The initial Series A Conversion Price per share for shares of Series A Preferred Stock shall be the Original Series A Issue Price, subject to adjustment as set forth in this Section B.3. The initial Series B Conversion Price per share for shares of Series B Preferred Stock shall be the Original Series B Issue Price, subject to adjustment as set forth in this Section B.3.

(b) Automatic Conversion. Each share of Series A Preferred Stock and Series B Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at that time in effect for such series, upon the earlier of (i) the date specified by vote or written consent or agreement of holders of at least a majority of the outstanding shares of the Series A Preferred Stock, or (ii) immediately upon the closing of the sale of this corporation's Common Stock in a firm commitment, underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), other than a registration relating solely to a transaction under Rule 145 under

such Act or to an employee benefit plan of this corporation, the aggregate proceeds of which to this corporation are at least \$20,000,000 (net of underwriters' commissions and expenses) and the public offering price of which is at least \$3.00 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares).

(c) Mechanics of Conversion. Before any holder of shares of a series of Preferred Stock shall be entitled voluntarily to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of this corporation or of any transfer agent for such stock, and shall give written notice to this corporation at such office that such holder elects to convert the same and shall state therein the number of shares to be converted and the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. The corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of such series of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of such series of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(ii) If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act or with a Deemed Liquidation Event, the conversion may, at the option of any holder tendering shares of such series of Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, or the closing of such Deemed Liquidation Event, as the case may be, in which event the person or persons entitled to receive the Common Stock upon conversion of such series of Preferred Stock shall not be deemed to have converted such series of Preferred Stock until immediately prior to such closing.

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

(i) Special Definitions. For purposes of this Section B.3(d), the following definitions apply:

(1) "Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock, Series A Preferred Stock, Series B Preferred Stock, or Convertible Securities (defined below).

(2) "Original Issue Date" shall mean, with respect to a series of Preferred Stock, the date on which the first share of such series of Preferred Stock was issued.

(3) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock, Series A Preferred Stock or Series B Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section B.3(d)(iii), deemed to be issued) by this corporation after the Original Issue Date, other than:

(A) shares of Common Stock issued or issuable upon conversion of shares of Series A Preferred Stock and Series B Preferred Stock;

(B) up to 2,600,000 shares of Common Stock (net of repurchases or lapsed options) issued or issuable to officers, directors or employees of, or consultants to, this corporation pursuant to stock option or stock purchase plans or agreements on terms approved by the Board of Directors (subject to adjustment for all subdivisions and combinations), unless otherwise approved by the Board of Directors; and

(C) shares of Common Stock issued or issuable in connection with stock dividends, stock splits, combinations, recapitalizations or similar transactions for which an adjustment is made pursuant to Section B.3(e) or Section B.3(f) below.

(ii) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Conversion Price for a series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section B.3(d)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by this corporation is less than the Conversion Price for such series of Preferred Stock in effect on the date of, and immediately prior to such issue.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event this corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options for Convertible Securities or for Series A Preferred Stock or Series B Preferred Stock, the conversion or exchange of such Convertible Securities or Series A Preferred Stock or Series B Preferred Stock shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue, or in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case as in which Additional Shares of Common Stock are deemed to be issued:

(1) No further adjustments in a Conversion Price shall be made upon the subsequent issue of such Convertible Securities, or Series A Preferred Stock or Series B Preferred Stock or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities or Series A Preferred Stock or Series B Preferred Stock;

(2) 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 this corporation, or decrease or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price for a series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of such Conversion Price shall affect Common Stock previously issued upon conversion of shares of a series of Preferred Stock);

(3) Upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price for a series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(A) in the case of Convertible Securities or Options for Common Stock the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by this corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by this corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus additional consideration, if any, actually received by this corporation upon such conversion or exchange; and

(B) in the case of Options for Convertible Securities or Series A Preferred Stock or Series B Preferred Stock, only the Convertible Securities or Series A Preferred Stock or Series B Preferred Stock, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by this corporation for the Additional Shares of Common Stock deemed to have been issued was the consideration actually received by this corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by this corporation (determined pursuant to Section B.3(d)(v)(2)) upon the issue of the Convertible Securities or Series A Preferred Stock or Series B Preferred Stock with respect to which such Options were actually exercised;

(4) No readjustment pursuant to clause (2) or (3) above shall have the effect of increasing the Conversion Price for a series of Preferred Stock to an amount which exceeds the lower of (a) the Conversion Price for such series of Preferred Stock on the original adjustment date, or (b) the Conversion Price for such series of Preferred Stock that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date;

(5) In the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Series A

Conversion Price shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in clause (3) above.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event this Corporation, at any time after the Original Issue Date shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section B.3(d)(iii)) without consideration or for a consideration per share less than the Conversion Price with respect to any series of Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, the Conversion Price for such series of Preferred Stock shall be reduced, concurrently with such issue, to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by this corporation for the total number of Additional Shares of Common Stock so issued (or deemed issued) would purchase at such Conversion Price in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated, as if all shares of Series A Preferred Stock and Series B Preferred Stock, all Convertible Securities had been fully converted into shares of Common Stock immediately prior to such issuance as of such date and all Options had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into Common Stock, if so convertible) as of such date.

(v) Determination of Consideration. For purposes of this Section B.3(d), the consideration received by this corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property. Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by this corporation excluding amounts paid or payable for accrued interest or accrued dividends;

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

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of this corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by this corporation for Additional Shares of Common Stock

deemed to have been issued pursuant to Section B.3(d)(iii), relating to Options and Convertible Securities shall be determined by dividing:

(A) the total amount, if any, received or receivable by this corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to this 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 or Series A Preferred Stock or Series B Preferred Stock, the exercise of such Options for Convertible Securities or such series of Preferred Stock and the conversion or exchange of such Convertible Securities or such series of Preferred Stock by

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

(e) Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that this corporation at any time or from time to time after the Original Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Conversion Price for any series of Preferred Stock in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that this corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration, then this corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

(f) Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of a series of Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization or reclassification, or otherwise (other than a subdivision or combination of shares provided for in Section B.3(e) above or a merger or other reorganization referred to in Section B.2 above), such series of Preferred Stock shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that such series of Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of such series of Preferred Stock immediately before that change.

(g) Other Distributions. In the event that this corporation shall declare a distribution payable in securities of other persons, evidence of indebtedness issued by this corporation or other persons, or assets (excluding cash dividends), then, in each such case the holders of the Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of this corporation entitled to receive such distribution.

(h) No Adjustment. No adjustment of the Conversion Price for any series of Preferred Stock shall be made in an amount less than one-tenth of one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward.

(i) No Impairment. Without consent of the holders of the then outstanding Series A Preferred Stock and Series B Preferred Stock as required by Section B.6, this corporation will not, by amendment of its Restated Certificate of Incorporation or through any reorganization, recapitalization, 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 this corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section B.3 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 dilution or impairment.

(j) Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon conversion of shares of a series of Preferred Stock. The corporation shall pay in cash the fair value of such fractional shares (as determined by the Board of Directors of the corporation) to those holders otherwise entitled to receive such fractional shares. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of such series of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of a series of Preferred Stock, pursuant to this Section B.3, this corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such series 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. This corporation shall, upon the written request at any time of any holder of such series of Preferred Stock furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of

other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

(k) Notices of Record Date. In the event of any taking by this corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this corporation shall mail to each holder of Preferred Stock at least 10 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(l) Reservation of Stock Issuable Upon Conversion. This corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of Series A Preferred Stock and Series B Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock and Series B Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred Stock and Series B Preferred Stock, in addition to such other remedies as shall be available to the holder of such series of Preferred Stock, this corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

(m) Notices. Any notice required by the provisions of this Section B.3 to be given to the holders of shares of Preferred Stock shall be deemed given upon personal delivery to the party to be notified (or upon the date of attempted delivery where delivery is refused) or, if sent by telecopier, telex, telegram, or other facsimile means, upon receipt of appropriate confirmation of receipt, or five days after deposit with the United States Postal Service, by registered or certified mail, postage prepaid, or one day after deposit with next day air courier, with postage and fees prepaid and addressed to each holder of record at the address of such holder appearing on the books of this corporation.

4. Redemption. The holders of the Series A Preferred Stock and Series B Preferred Stock shall have the right to redemption of such stock as set forth in this Section B.4.

(a) Redemption Request.

(i) On or at any time after January 1, 2005, and upon the receipt by this corporation from the holders of at least sixty-six and two-thirds (66-2/3%) of the then outstanding Series A Preferred Stock of their written request for redemption hereunder of their shares, this corporation shall, at any time it may lawfully do so, redeem each share of the Series A Preferred Stock by paying in cash a sum equal to the Original Series A Purchase Price plus all accrued but unpaid dividends thereon (the "Series A Redemption Price"). If such redemption request is received, this corporation shall redeem 33.33% of the then outstanding

shares of Series A Preferred Stock and shall redeem an equal number of such shares on the first and second anniversary date of such redemption.

(ii) On or at any time after August 1, 2005, and upon the receipt by this corporation from the holders of at least sixty-six and two-thirds (66-2/3%) of the then outstanding Series B Preferred Stock of their written request for redemption hereunder of their shares, this corporation shall, at any time it may lawfully do so, redeem each share of the Series B Preferred Stock by paying in cash a sum equal to the Original Series B Purchase Price plus all accrued but unpaid dividends thereon (the "Series B Redemption Price"). If such redemption request is received, this corporation shall redeem 33.33% of the then outstanding shares of Series A Preferred Stock and shall redeem an equal number of such shares on the first and second anniversary date of such redemption.

(b) Procedures.

(i) In the event of any redemption of all or part of a then outstanding series of Preferred Stock, any holder thereof may avoid all or part of such redemption by converting into Common Stock, pursuant to Section B.3 above, up to that number of shares of such holder's series of Preferred Stock, as the case may be, scheduled to be redeemed in such redemption. Such holder may condition such conversion on deposit by this corporation of the Redemption Price for the shares to be redeemed pursuant to Section B.4(b)(iv) below.

(ii) At least 30 but no more than 60 days prior to the date fixed for any redemption of the Series A Preferred Stock or Series B Preferred Stock (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 such series of Preferred Stock to be redeemed, at the address last shown on the records of this corporation for such holder or given by the holder to this corporation for the purpose of notice, 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 for such series, the place at which payment may be obtained and the date on which such holder's conversion rights as to such shares terminate and calling upon such holder to surrender to this corporation, in the manner and at the place designated, the certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Except as provided in Section B.4(b)(iii), on or after the Redemption Date, each holder of Preferred Stock to be redeemed shall surrender to this 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.

(iii) From and after such Redemption Date, unless there shall have been a default in payment of the Redemption Price, all dividends on the series of Preferred Stock designated for redemption in the Redemption Notice shall cease to accrue, all rights of the holders of such shares (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 this corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of this corporation legally available for redemption of shares of Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares of Series A Preferred Stock and Series B Preferred Stock ratably among the holders of such series 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 this 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 this corporation has become obligated to redeem on any Redemption Date but which it has not redeemed.

(iv) Three days prior to the Redemption Date, this corporation shall deposit the Redemption Price of all outstanding shares of the series of Preferred Stock designated for redemption in the Redemption Notice, and not yet redeemed or converted, with a bank or trust company having aggregate capital and surplus in excess of \$50,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed. Simultaneously, this corporation shall deposit irrevocable instruction and authority to such bank or trust company to publish the notice of redemption thereof (or to complete such publication if theretofore commenced) and to pay, on and after the date fixed for redemption or prior thereto, the Redemption Price of such series of Preferred Stock to the holders thereof upon surrender of their certificates. Any monies deposited by this corporation pursuant to this Section B.4(b)(iv) for the redemption of shares which are thereafter converted into shares of Common Stock pursuant to Section B.3 hereof no later than the close of business on the Redemption Date shall be returned to this corporation forthwith upon such conversion. The balance of any monies deposited by this corporation pursuant to this Section B.4(b)(iv) remaining unclaimed at the expiration of two years following the Redemption Date shall thereafter be returned to this corporation, provided that the stockholder to which such money would be payable hereunder shall be entitled, upon proof of its ownership of such series of Preferred Stock and payment of any bond requested by this corporation, to receive such monies but without interest from the Redemption Date.

#### 5. Voting Rights.

(a) The holder of each share of Series A Preferred Stock and Series B Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could be converted on the record date for the vote or written consent of stockholders. In all cases any fractional share, determined on an aggregate conversion basis, shall be rounded to the nearest whole share. 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 this 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.

(b) Voting for the Election of Directors. The authorized number of directors of this corporation is seven (7). The holders of shares of Preferred Stock, voting together as a single class, shall be entitled to elect four (4) directors of this corporation at each annual election of directors. The holders of outstanding Common Stock shall be entitled to elect three (3) directors of this corporation at each annual election of directors.

In the case of any vacancy (other than a vacancy caused by removal) in the office of a director occurring among the directors elected by the holders of a class or series of stock pursuant to this Section B.5(b), the remaining directors so elected by that class or series 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 or series) 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 or series of stock 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 or series of stock entitled to elect such director or directors, 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 or series of stock represented at the meeting or pursuant to unanimous written consent.

6. Protective Provisions. In addition to any approvals required by law, so long as 2,000,000 shares of the originally issued shares of Preferred Stock are outstanding, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Preferred Stock:

(a) sell, convey, or otherwise dispose of or encumber all or substantially all of its property or business or merge with or into or consolidate with any other corporation (other than a wholly owned subsidiary corporation) or effect any transaction or series of related transactions in which more than 50% of the voting power of this corporation is disposed of; or

(b) redeem, purchase or otherwise acquire for value (or pay into or set aside for a sinking fund for such purpose) any share of Common Stock (other than in connection with the termination of services); or

(c) increase or decrease the authorized number of shares of Preferred Stock or Common Stock; or

(d) authorize or issue, or obligate itself to authorize or issue (by reclassification or otherwise) any new class or series of stock (or other equity security including any other security convertible into or exercisable for any equity security) having a preference senior to, or being on a parity with, the Series A Preferred Stock or Series B Preferred Stock with respect to voting, dividends, redemption or upon liquidation; or



(e) amend this corporation's Certificate of Incorporation or bylaws, which amendment would adversely affect the Series A Preferred Stock or Series B Preferred Stock; or

(f) increase or decrease the size of the Board of Directors of this corporation from seven.

7. Status of Converted Stock. In the event any shares of Series A Preferred Stock or Series B Preferred Stock shall be converted pursuant to Section B.3 hereof, the shares so converted shall be canceled and shall not be issuable by this corporation, and the Restated Certificate of Incorporation of this corporation shall be appropriately amended to effect the corresponding reduction in this corporation's authorized capital stock.

### C. Common Stock.

1. Relative Rights of Preferred Stock and Common Stock. All preferences, voting powers, relative, participating optional or other special rights and privileges, and qualifications, limitations, or restrictions of the Common Stock are expressly made subject and subordinate to those that may be fixed with respect to any shares of the Preferred Stock.

2. Voting Rights. Except as otherwise required by law or this Restated Certificate of Incorporation, each holder of Common Stock shall have one vote in respect of each share of stock held by such holder of record on the books of this corporation for the election of directors and on all matters submitted to a vote of stockholders of this corporation.

3. Dividends. Subject to the preferential rights of the Preferred Stock, the holders of shares of Common Stock shall be entitled to receive, when and if declared by the board of directors, out of the assets of this corporation which are by law available therefor, dividends payable either in cash, in property or in shares of capital stock.

4. Dissolution, Liquidation or Winding Up. In the event of any dissolution, liquidation or winding up of the affairs of this corporation or any Deemed Liquidation Event, after distribution in full of the preferential amounts, if any, to be distributed to the holders of shares of the Preferred Stock, holders of Common Stock shall be entitled to participate in any distribution of the assets of this corporation in accordance with Section B.2 of Article III.

## ARTICLE V

This corporation is to have perpetual existence.

## ARTICLE VI

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

A. The board of directors of the corporation is expressly authorized to adopt, amend or repeal the bylaws of the corporation; provided, however, that the bylaws may only be amended in accordance with the provisions thereof.

B. Elections of directors need not be by written ballot unless the bylaws of the corporation shall so provide.

C. The books of the corporation may be kept at such place within or without the State of Delaware as the bylaws of the corporation may provide or as may be designated from time to time by the board of directors of the corporation.

#### ARTICLE VII

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

Any amendment, repeal or modification of the foregoing provisions of this Article VIII, or the adoption of any provision in an amended or restated Certificate of Incorporation inconsistent with this Article VIII, by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such amendment, repeal, modification or adoption.

#### ARTICLE VIII

To the fullest extent permitted by applicable law, this corporation is authorized to provide indemnification of (and advancement of expenses to) such agents of this corporation (and any other persons to which Delaware law permits this corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to limits created by applicable Delaware law (statutory or nonstatutory), with respect to actions for breach of duty to this corporation, its stockholders and others.

Any amendment, repeal or modification of the foregoing provisions of this Article IX shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any director of this corporation with respect to any acts or omissions of such director, officer or agent occurring prior to such amendment, repeal or modification.

**ARTICLE IX**

Subject to compliance with applicable protective voting rights that have been or may be granted to the Preferred Stock or series thereof in a Certificate of Determination or this Restated Certificate of Incorporation, this corporation reserves the right to amend or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon a stockholder herein are granted subject to this reservation.

\* \* \*

**FOURTH** This Restated Certificate of Incorporation was duly adopted by the Board of Directors of this corporation.

**FIFTH:** This Restated Certificate of Incorporation was duly adopted by the written consent of the sole stockholder of the corporation in accordance with Sections 242 and 245 of the General Corporation Law of Delaware and written notice of such action has been given as provided in Section 228.

IN WITNESS THEREOF, BioWeb, Inc. has caused this certificate to be signed by the undersigned officer, thereunto duly authorized, this 1 day of August, 2000.

BIOWEB, INC.

By: \_\_\_\_\_

  
Gary H. Stroy  
Chief Executive Officer

CERTIFICATE OF MAILING

I hereby certify that the attached executed Recordation of Change of Name cover sheet, a copy of the Delaware State Certificate of Amendment and Restated Articles of Incorporation, a check in the amount of \$40.00, a copy of the cover sheet, and a self-addressed stamped postal acknowledgment card are being deposited with the United States Postal Service in an envelope addressed to " U.S. Patent and Trademark Office, Office of Public Records, Attn: Customer Services Counter, 1213 Jefferson Davis Highway, 3<sup>rd</sup> Floor, Arlington, Virginia 22202" on March 14, 2001.

  
Stacy L. Taylor