

4.023.01

05-03-2001



101700544

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

New

Resubmission (Non-Recordation)
Document ID # _____

Correction of PTO Error
Reel # _____ Frame # _____

Corrective Document
Reel # _____ Frame # _____

Conveyance Type

Assignment License

Security Agreement Nunc Pro Tunc Assignment

Merger
Effective Date
Month Day Year _____

Change of Name

Other _____

Conveying Party

Mark if additional names of conveying parties attached

Name Domain Knowledge Inc. Execution Date
Month Day Year 12 07 00

Formerly _____

Individual General Partnership Limited Partnership Corporation Association

Other _____

Citizenship/State of Incorporation/Organization California

Receiving Party

Mark if additional names of receiving parties attached

Name Transilica Inc.

DBA/AKA/TA _____

Composed of _____

Address (line 1) 6440 Lusk Boulevard

Address (line 2) Suite D-205

Address (line 3) San Diego CA 92121
City State/Country Zip Code

Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment)

Corporation Association

Other _____

Citizenship/State of Incorporation/Organization California

FOR OFFICE USE ONLY

05/02/2001 TDIAZ1 00000172 78027320

01 FC:481 40.00 DP

02 FC:482 25.00 DP

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Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK
REEL: 002285 FRAME: 0335

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments. #

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

<input type="text" value="78027320"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="78027989"/>	<input type="text"/>	<input type="text"/>
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<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties

Enter the total number of properties involved. #

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment:

Enclosed Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes No

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. Charges to deposit account are authorized, as indicated herein.

Kathryn M. Wheble

4/20/01

Name of Person Signing

Signature

Date Signed

State of California



SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 23 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

DEC 07 2000



Secretary of State

AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
Domain Knowledge Inc.

ENDORSED - FILED
*in the office of the Secretary of State
of the State of California*

DEC 05 2000

BILL JONES, Secretary of State

Hock Law hereby certifies that:

1. He is the President and Secretary of Domain Knowledge Inc., a California corporation (the "Corporation or the "Company").
2. The Articles of Incorporation of this Corporation are amended and restated in their entirety to read as follows:

I

The name of this Corporation is Transilica Inc.

II

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 California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

A. Classes of Stock

This Corporation is authorized to issue two classes of shares, designated "Preferred Stock" and "Common Stock." The total number of shares that this Corporation shall have authority to issue is 122,655,240 of which 100,000,000 shares shall be Common Stock ("Common Stock") and 22,655,240 shares shall be Preferred Stock ("Preferred Stock"). The Preferred Stock may be issued from time to time in one or more series. The first series shall be designated "Series A Stock" and shall consist of 11,250,000 shares. The second series shall be

designated "Series B Stock" and shall consist of 11,405,240 shares. Except as to the Series A Stock and Series B Stock and except as otherwise provided in these Amended and Restated Articles of Incorporation, the Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon such additional series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or any of them. The Board of Directors is also authorized to decrease the number of shares of any series of Preferred Stock, subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

B. Rights, Preferences, Privileges and Restrictions of Preferred Stock

A statement of the rights, preferences, privileges and restrictions granted to or imposed on the Series A Stock and the Series B Stock and the holders thereof is as follows:

1. Definitions:

As used herein, the following terms shall have the following definitions:

- a. "Series A Stock" means the Series A Preferred Stock of the Corporation.
- b. "Series B Stock" means the Series B Preferred Stock of the Corporation.
- c. "Preferred Stock" means the Preferred Stock of the Corporation of whatever series.

d. "Original Issue Price" means \$0.20 per share for the Series A Stock and \$1.6026 per share for the Series B Stock.

2. Dividends.

a. The holders of shares of Series A Stock and Series B Stock shall be entitled to receive with respect to each share, when and as declared by the Board of Directors of the Corporation, out of funds legally available for such purpose, dividends at an annual rate, based on a year of 360 days consisting of 12 thirty-day months, equal to 9% applied to the Original Issue Price per share of Series A Stock and 8% applied to the Original Issue Price per share of Series B Stock. The right to such dividends on the Series A Stock and Series B Stock shall not be cumulative, and no right shall accrue to holders of Series A Stock or the Series B Stock by reason of the fact that dividends on such shares are not declared or paid in any prior year.

b. If full dividends on all outstanding shares of Series A Stock and Series B Stock at the rates per share set out in this Section (B)(2) have not been declared and paid, the Corporation shall not declare or pay or set aside for payment any dividends or make any other payments or distributions on the Common Stock.

c. No dividends shall be declared or paid on account of the Common Stock unless a like dividend at the same rate per share is declared and paid as to each share of the Series A Stock and Series B Stock on the basis of the number of shares of Common Stock into which such share of Series A Stock and Series B Stock, as the case may be, is convertible on the date on which the Corporation declares such dividend.

d. In the event that the Corporation shall have declared but unpaid dividends outstanding immediately prior to, and in the event of, a conversion of Series A Stock

and Series B Stock (as provided in Section (B)(4) hereof), the Corporation shall, at the option of the each holder, pay in cash to each holder of Series A Stock and Series B Stock, as the case may be, subject to conversion, the full amount of any such dividends or allow such dividends to be converted into Common Stock in accordance with, and pursuant to the terms specified in, Section (B)(4) hereof.

3. Liquidation Preference.

a. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series A Stock and Series B Stock shall be entitled to receive pari passu with each other and prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock by reason of their ownership thereof, \$0.50 for each share of Series A Stock then held by them and \$1.6026 for each share of Series B Stock then held by them as adjusted for stock dividends, combinations or splits and, in addition, an amount equal to all declared but unpaid dividends on the Series A Stock and Series B Stock then held by them. If, upon occurrence of such event, the assets and funds thus distributed among the holders of the Preferred Stock shall be insufficient to permit the payment to such holders of their respective full preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of Series A Stock and Series B Stock pari passu in proportion to the full aforesaid preferential amounts to which each such holder is entitled. After payment has been made to the holders of Preferred Stock of the full amounts to which they shall be entitled as aforesaid, all remaining assets of the Corporation shall be distributed among all holders of Common Stock and the holders of the Preferred Stock on an as-if-converted to Common Stock basis provided, however, that no holder of Series A Stock shall

be entitled to continue to participate in such distribution after such holder has received pursuant to this Section 3(a) an aggregate amount per share of Series A Stock equal to ten (10) times the applicable Original Issue Price of the Series A Stock, and no holder of Series B Stock shall be entitled to participate in such distribution after such holder has received pursuant to this Section 3(a) an aggregate amount per share of Series B Stock equal to four (4) times the Original Issue Price of the Series B Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to the Preferred Stock). Thereafter, the remaining assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock.

b. For purposes of this Section (B)(3), a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, and to include,

i. the Corporation's sale, transfer, lease or other conveyance of all or substantially all of its assets, or

ii. the acquisition of the Corporation by another entity by means of merger, consolidation or reorganization resulting in the exchange of the outstanding shares of the Corporation for securities or consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary, in which the shareholders of the Corporation immediately prior to such event do not own a majority of the outstanding shares of the surviving corporation.

c. any securities to be delivered to the holders of the Series A Stock and Series B Stock pursuant to this Section (B)(3) 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 (3) 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 prices over the 30-day period ending three (3) 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.

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 determined by the Board of Directors.

4. Conversion

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

a. Right to Convert.

i. Each share of Series A Stock and Series B Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for the Series A Stock and Series B Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined with respect to the Series A Stock by dividing the Series A Original Issue Price by the Series A Conversion Price (as defined below) in effect at the time of conversion and with

respect to the Series B Stock by dividing the Series B Original Issue Price by the Series B Conversion Price (as defined below) in effect at the time of conversion.

The price at which shares of Common Stock shall be deliverable upon conversion of the Series A Stock (the "Series A Conversion Price") shall initially be \$0.20 per share of Common Stock. The price at which shares of Common Stock shall be deliverable upon conversion of the Series B Stock (the "Series B Conversion Price") shall initially be \$1.6026 per share of Common Stock. Such Series A Conversion Price and Series B Conversion Price shall be subject to adjustment as hereinafter provided (the "Series A Conversion Price" and the "Series B Conversion Price" shall collectively be referred to as the "Conversion Prices").

ii. Each share of Series A Stock and Series B Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Prices

(A) in the event of, and contingent upon, the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation to the public at a price per share of not less than \$4.80 (as adjusted for stock splits, reverse stock splits and the like effected after the Original Issue Date) and an aggregate offering price of not less than \$25,000,000 (a "Qualified IPO"), or

(B) by consent of the holders of 80% of the then outstanding shares of the Series A Stock and Series B Stock, voting together as a single class.

b. Mechanics of Conversion.

No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional share to which a holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of the

Common Stock as determined by the Board of Directors. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that he elects to convert the same. Such notice shall also state whether the holder elects, pursuant to Section (B)(2) hereof, to receive declared but unpaid dividends on the Preferred Stock proposed to be converted in cash, or to convert such dividends into shares of Common Stock at their fair market value as determined by the Board of Directors. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into a fractional share of Common Stock, and any declared but unpaid dividends on the converted Preferred Stock that the holder elected to receive in cash. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares 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. If the conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion shall be conditioned upon the closing of such public offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to such closing.

c. Adjustments to Conversion Price for Diluting Issues.

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

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

(B) “Options” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(C) “Convertible Securities” shall mean any evidences of indebtedness, shares (other than Common Stock or Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(D) “Additional Shares of Common Stock” shall mean all shares of Common Stock issued (or, pursuant to Section (B)(4)(c)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(1) upon conversion of shares of Series A Stock and Series B Stock;

(2) to officers or employees of, or consultants to the Corporation pursuant to a stock grant, warrant, option plan or purchase plan or other employee stock incentive program in an aggregate amount of up to 6,068,000 shares or in such additional amounts as approved by the Board of Directors;

(3) as a dividend or distribution on Series A Stock or Series B Stock;

(4) pursuant to an acquisition, which is approved by the Board of Directors, of another business entity by the Corporation by merger, purchase of substantially all of the assets of such entity, or other reorganization whereby the Corporation acquires such entity;

(5) to leasing entities or financial institutions in connection with bona fide arm's length commercial leasing or borrowing transactions, to real property lessors and to strategic partners, pursuant to agreements approved by the Board of Directors;

(6) by way of dividend or other distribution on shares of Common Stock excluded from the definition of Additional Shares of Common Stock by the foregoing clauses (1), (2), (3), (4) and (5) or on shares of Common Stock so excluded; and

(7) In a Qualified IPO

ii. No Adjustment of Conversion Price. No adjustment in the Conversion Price of a particular series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the relevant Conversion Price in effect on the date of and immediately prior to such issue for such series of Preferred Stock.

iii. Deemed Issue of Additional Shares of Common Stock.

(A) Options and Convertible Securities. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities 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 for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such options or, in the case of Convertible Securities and Options therefore, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section (B)(4)(e) hereof) of such Additional Shares of Common Stock would be less than the Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities, provided, however, that no such

adjustment of the Conversion Price shall affect the Common Stock previously issued upon conversion of the Series A Stock and Series B Stock;

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price to an amount that exceeds the lower of (x) the Conversion Price on the original adjustment date, or (y) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date;

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

(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 therefore was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised such exercised Options plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities that were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

(b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise

thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised such exercised Options, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section (B)(4)(e)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(c) in the case of any Options that expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options issued on the same date, whereupon such adjustment shall be made in the same manner provided in clause (d) below; and

(d) if such record date shall have been fixed and such options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price that became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Section (B)(4)(c)(iii) as of the actual date of their issuance.

(B) Stock Dividends. In the event the Corporation, at any time or from time to time after the Original Issue Date, shall declare or pay any dividend on the Common Stock payable in Common Stock, then Additional Shares of Common Stock shall be deemed to have been issued immediately after the close of business on the record date for the determination of holders of any, class of securities entitled to receive such dividend.

d. Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.

In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section (B)(4)(c)(iii)) without consideration or for a consideration per share less than the Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction,

i. 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 that the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price in effect immediately prior to such issuance, and

ii. the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; provided that, for the purposes of this Section (B)(4)(d), all shares of Common Stock issuable upon conversion of all outstanding Preferred Stock and all outstanding Convertible Securities, and upon exercise of all outstanding Options, shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued pursuant to Section (B)(4)(c)(iii), such Additional Shares of Common Stock shall be deemed to be outstanding.

e. Determination of Consideration.

For purposes of this Section (B)(4), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

i. Cash and Property. Such consideration shall:

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

(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 by the Board of Directors in the good faith exercise of its reasonable business judgment; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration that 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.

ii. Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section (B)(4)(c)(iii)(A), relating to Options and Convertible Securities, shall be determined by dividing:

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

exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

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

iii. Stock Dividends. Any Additional Shares of Common Stock deemed to have been issued relating to stock dividends shall be deemed to have been issued for no consideration.

f. Adjustments for Subdivisions or Combinations of Common Stock.

In the event the outstanding shares of Common Stock shall be subdivided or combined, by reclassification or otherwise, into a greater or lesser number of shares without a proportionate and corresponding subdivision or combination of the outstanding shares of Series A Stock and Series B Stock, the relevant Conversion Price in effect immediately prior to such subdivision or combination shall, concurrently with the effectiveness of such subdivision or combination, be proportionately adjusted.

g. No Impairment.

The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section (B)(4) and in the taking of all such action as

may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Stock and Series B Stock against impairment.

h. Certificate as to Adjustments.

Upon the occurrence of each adjustment or readjustment of the relevant Conversion Price pursuant to this Section (B)(4), the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Stock and Series B Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Stock and Series B Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the relevant Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of Series A Stock and Series B Stock as the case may be.

i. Notices of Record Date.

In the event that the Corporation shall propose at any time:

i. to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

ii. to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights;

iii. to effect any reclassification or recapitalization of its Common Stock shares outstanding involving a change in the Common Stock shares; or

iv. to merge or consolidate with or into any other corporation, or sell, lease, transfer or convey all or substantially all its assets or business, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to the holders of the Preferred Stock:

(A) at least 20 days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shares shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (C) and (D) above; and

(B) in the case of the matters referred to above, at least 20 days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shares shall be entitled to exchange their Common Stock shares for securities or other property deliverable upon the occurrence of such event if applicable).

Each such written notice shall be given by first class mail, postage prepaid, addressed to the holders of Series A Stock and Series B Stock at the address for each such holder as shown on the books of the Corporation.

j. 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 the Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all the outstanding shares of the Preferred Stock. 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 the Preferred Stock, the

Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

5. Voting Rights.

Except as otherwise expressly provided herein or as required by law, the holder of each share of Series A Stock and Series B Stock, as the case may be, shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series A Stock or Series B Stock, as applicable, could then be converted and shall have voting rights and powers equal to the voting rights and powers of the Common Stock (except as otherwise expressly provided herein or as required by law) voting together with the Common Stock as a single class and shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation. Fractional shares shall not, however, be permitted, and any fractional voting rights resulting from the above formula (after aggregating all shares into which the shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half share being rounded upward to a full share). This Corporation's Board of Directors shall consist of seven members. At each meeting for the election of directors (i) the holders of the Series B Stock voting as a separate class, shall be entitled to elect two (2) members of the Board of Directors, (ii) the holders of the Series A Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board, (iii) the holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board, and (iv) the holders of the Preferred and Common Stock, voting together, shall be entitled to elect the remaining director.

Softbank Venture Capital and the representative of the holders of the Series A Stock shall each have the right to appoint one representative to observe all meetings of the Board of Directors in a non-voting capacity. The Company shall reimburse the reasonable expenses of the Series A Preferred directors and the Series B Preferred directors and their respective observers and for costs incurred in attending meetings of the Board of Directors and other meetings or events attended on behalf of the Company.

6. Protective Provisions.

In addition to any other rights provided by law, so long as any Preferred Stock shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of such outstanding shares of the Preferred Stock: (i) alter or change the rights, preferences or privileges of the Preferred Stock, (ii) increase or decrease the authorized number of shares of Common Stock or Preferred Stock, (iii) create (by reclassification or otherwise) any new class or series of shares having rights, preferences or privileges senior to or on a parity with the Preferred Stock, (iv) take any action that results in the redemption or repurchase of any shares of Common Stock (other than pursuant to equity incentive agreements with service providers, employees, or shareholders, giving the Company the right to repurchase shares upon the termination of services), (v) take any action that results in any merger, other corporate reorganization, sale of control, or any transaction in which all or substantially all of the assets of the Company are sold, (vi) amend or waive any provision of the Company's Articles of Incorporation or Bylaws in a manner adverse to the interests of the Preferred Stock, (vii) increase or decrease the authorized size of the Company's Board of Directors, (viii) take any action that results in the payment or declaration of any dividend on any shares of Common or Preferred Stock except as contemplated herein, or (ix) take any action that

results in the issuance of debt in excess of \$100,000 without Board of Directors' approval. Notwithstanding the foregoing, if the total consideration to be received in a merger or sale is greater than \$750,000,000 then the holders of the Preferred Stock will have the right to vote on such transaction, together with all other stockholders of the Company, and not as a separate class.

a. Status of Converted Stock.

In the event any shares of Series A Stock or Series B Stock shall be converted pursuant to Section (B)(4) hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation, and the Articles of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

b. Residual Rights.

All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the Common Stock.

c. Consent to Certain Repurchases of Common Stock Deemed to be Distributions.

Each holder of Series A Stock and Series B Stock shall be deemed to have consented, for purposes of Sections 502, 503 and 506 of the California Corporations Code (but subject to the requirements of Section (B)(6) above), to distributions made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by employees or consultants upon termination of their employment or services pursuant to agreements providing for such right of repurchase between the Corporation and such persons.

IV

A. Limitation of Directors Liability

The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

B. Indemnification of Corporate Agents

This Corporation is authorized to indemnify the directors and officers of the Corporation to the fullest extent permissible under California law.

C. Repeal or Modification

Any repeal or modification of the foregoing provisions of this Article IV by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

3. The foregoing Amended and Restated Articles of Incorporation have been duly approved by the Board of Directors.

4. The foregoing Amended and Restated Articles of Incorporation have been duly approved by the required vote of shareholders in accordance with Sections 902 and 903 of the Corporations Code. The total number of outstanding shares of the Corporation is 20,122,000 shares of Common Stock and 11,250,000 shares of Series A Stock. There are no outstanding shares of the Corporation's Series B Stock. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than 50% of the Common Stock voting as a separate class and more than 66.67% of the Series A Stock voting as a separate class.

The undersigned declares under penalty of perjury that the matters set forth in the foregoing certificate are true and correct of his own knowledge.

IN WITNESS WHEREOF, the undersigned has executed this certificate in San Diego, California this 29th day of November, 2000.



Hock Law, President



Hock Law, Secretary

