

08-10-2001



To the Honorable Commissioner of Patents

101806121

1 original documents or copy thereof.

1. Name(s) of conveying party(ies):  
IDS Integrated Data Systems Corporation

Individual(s)  
 Association  
 Limited Partnership  
 Corporation  
 General Partnership  
 Other:

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

7-30-

3. Nature of conveyance:

Assignment  
 Merger  
 Security Agreement  
 Change of Name  
 Other:

Execution Date: August 9, 2000

2. Name(s) and address(es) of receiving party(ies):

Name: Callixa Corporation

Address: 235 Montgomery Street, Suite 1035  
San Francisco, California 94104

Individual(s)  
 Association  
 General Partnership  
 Limited Partnership  
 Corporation of Delaware  
 Other:

If assignee is not domiciled in the United States, a domestic representative is attached:  Yes  No

(Designation must be a separate document from Assignment)

Additional name(s) & address(es) attached?  Yes  No

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

A. Trademark Application Number(s):  
76/128,451

Additional numbers attached?  Yes  No

B. Trademark Registration Number(s):

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

Name: Julia Anne Matheson

Address: FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.  
1300 I Street, N.W.  
Washington, D.C. 20005-3515

6. Total number of applications and registrations involved: 1

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

Enclosed  
 Authorized to be charged to deposit account  
 Authorized to be charged to deposit account only if fee is deficient

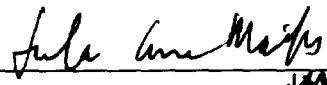
08/09/2001 BTOM11 00000127 060916 76128451  
 01 FC:481 40.00 CH

8. Deposit Account No.: 06-0916

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.*

Julia Anne Matheson  July 24, 2001

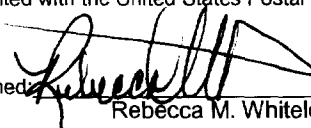
\_\_\_\_\_  
Name of person signing Signature Date

Total number of pages including cover sheet, attachments and documents: 22

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service addressed to: Honorable Commissioner of Patents and Trademarks, Washington, D.C. BOX ASSIGNMENTS.

Date: July 24, 2001

Signed:   
Rebecca M. Whitelock

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

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I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "CALLIXA CORPORATION" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE FIRST DAY OF JULY, A.D. 1998, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "IDS INTEGRATED SYSTEMS CORPORATION" TO "IDS INTEGRATED DATA SYSTEMS CORPORATION", FILED THE SIXTH DAY OF JULY, A.D. 1998, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-SIXTH DAY OF JANUARY, A.D. 2000, AT 9 O'CLOCK A.M.

RESTATED CERTIFICATE, FILED THE FIFTH DAY OF APRIL, A.D. 2000, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "IDS INTEGRATED DATA SYSTEMS CORPORATION" TO "CALLIXA CORPORATION", FILED THE TENTH DAY OF AUGUST, A.D. 2000, AT 9 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

2916036 8100H

AUTHENTICATION: 1195515

010287647

DATE: 06-18-01

TRADEMARK  
REEL: 002344 FRAME: 0592

State of Delaware  
Office of the Secretary of State

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AFORESAID CORPORATION.



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

2916036 8100H

010287647

AUTHENTICATION: 1195515

DATE: ~~TRADEMARK~~  
REEL: 002344 FRAME: 0593

**CERTIFICATE OF INCORPORATION**

**OF**

**IDS INTEGRATED SYSTEMS CORPORATION**

**FIRST:** The name of the corporation is **IDS Integrated Systems Corporation.**

**SECOND:** The address of the registered office of the corporation in the State of Delaware is **1013 Centre Road, Wilmington, Delaware 19805, County of New Castle.** The name of the registered agent of the corporation at such address is **Corporation Service Company.**

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

**FOURTH:** The total number of shares of stock which the corporation shall have authority to issue is **3,000,000 shares of common stock with a par value of \$.001 per share.**

**FIFTH:** The business and affairs of the corporation shall be managed by the board of directors, and the directors need not be elected by ballot unless required by the by-laws of the corporation.

**SIXTH:** In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the board of directors is expressly authorized to adopt, amend or repeal the by-laws.

**SEVENTH:** The corporation reserves the right to amend and appeal any provision contained in this certificate of incorporation in the manner prescribed by the laws of the State of Delaware. All rights herein conferred are granted subject to this reservation.

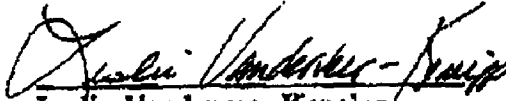
**EIGHTH:** The incorporator is **Leslie Vanderveer-Kensipp, whose mailing address is Loeb & Loeb LLP, 1000 Wilshire Boulevard, Suite 1800, Los Angeles, CA 90017.**

**NINTH:** 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 any improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this article to authorize corporate action further eliminating or limiting the personal liability of directors, then 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 appeal or modification of the foregoing paragraph by the stockholders 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.

I, the undersigned, being the incorporator, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this certificate of incorporation, do certify that the facts herein stated are true, and, accordingly, have hereto set my hand this 30th day of June 30, 1998.

  
Leslie Vanderveer-Keneipp  
Incorporator

VAL41085.X01

**CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF**

**IDS INTEGRATED SYSTEMS CORPORATION**


It is hereby certified that:

1. The name of the corporation is IDS Integrated Systems Corporation.
2. The corporation has not received any payment for any of its stock.
3. The Certificate of Incorporation of the corporation is hereby amended by striking out First Article thereof and by substituting in lieu of said Article the following new Article:

"1. The name of the corporation is IDS Integrated Data Systems Corporation."

4. The amendment of the Certificate of Incorporation herein certified was duly adopted, pursuant to the provisions of Section 241 of the General Corporation Law of the State of Delaware, by the sole incorporator, no directors having been named in the certificate of incorporation and no directors having been elected.

Dated: July 7, 1998

  
 \_\_\_\_\_  
 Leslie Vanderveer-Kenipp  
 Incorporator

**CERTIFICATE OF AMENDMENT**  
**OF**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**IDS INTEGRATED DATA SYSTEMS CORPORATION**

IDS Integrated Data Systems Corporation, a Delaware corporation (the "Corporation"), does hereby certify:

FIRST: That Article FOURTH of the Certificate of Incorporation of the Corporation is hereby amended to read in its entirety as follows:

"The total number of shares of stock which the corporation shall have authority to issue is 10,000,000 shares of common stock with a par value of \$.001 per share."

SECOND: That said amendment was duly adopted in accordance with Section 242, and duly approved by written consent in accordance with Section 141(f) and 228 of the Delaware General Corporation Law.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed by its duly authorized officer this 24th day of January, 2000.

IDS INTEGRATED DATA SYSTEMS  
CORPORATION, a Delaware corporation

By: Kenneth Benbassat  
Kenneth R. Benbassat, Secretary

**RESTATED CERTIFICATE OF INCORPORATION  
OF  
IDS INTEGRATED DATA SYSTEMS CORPORATION**

IDS Integrated Data Systems Corporation, a Delaware corporation (the "Corporation"), does hereby certify that:

**FIRST:** The name of the Corporation is IDS Integrated Data Systems Corporation.

**SECOND:** The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on July 1, 1998. A Certificate of Amendment of Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on July 6, 1998. A second Certificate of Amendment of Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on January 26, 2000. Original name was IDS Integrated Systems Corporation.

**THIRD:** The Certificate of Incorporation, as amended, is hereby amended and restated as set forth herein.

**FOURTH:** The amendment and restatement of the Certificate of Incorporation as hereinafter set forth has been duly adopted and approved in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware.

**FIFTH:** The amendment and restatement of the Certificate of Incorporation provides for one class each of Preferred Stock and Common Stock of the Corporation.

**SIXTH:** The text of the Certificate of Incorporation of the Corporation is amended and restated in full to read as follows:

**ARTICLE I**

The name of the Corporation is IDS Integrated Data Systems Corporation.

**ARTICLE II**

The street address of the registered office of the Corporation in the State of Delaware is 1013 Centre Road, Wilmington, Delaware 19805, County of New Castle. The name of the registered agent of the corporation at such address is Corporation Service Corporation.

**ARTICLE III**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as set forth in Title 8 of the Delaware Corporate Code (the "GCL").



## ARTICLE IV

The total number of shares of all classes of stock which the Corporation shall have authority to issue is 13,500,000 consisting of (i) 10,000,000 shares of common stock, \$.001 par value per share ("Common Stock"), and (ii) 3,500,000 shares of Preferred Stock, \$.001 par value per share, all of which shall be designated Series A Preferred Stock (the "Series A Preferred").

## ARTICLE V

The relative powers, preferences, special rights, qualifications, limitations and restrictions granted to or imposed on the respective classes of the shares of capital stock or the holders thereof are as follows:

1. Dividends.

(a) Preference Dividends. The holders of the Series A Preferred 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 or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the rate of \$.348 per share per annum, payable quarterly, from the date of issuance of the Series A Preferred to the date of payment of any dividend paid on, or other distribution in respect of, the Common Stock. So long as any shares of the Series A Preferred remain outstanding, the Corporation may not purchase, redeem or pay dividends on, or make any other distribution in respect of, any capital stock other than the Series A Preferred.

(b) Dividends Noncumulative. Dividends on shares of Common Stock and Series A Preferred under this Section 1 shall be payable when, as and if declared by the board of directors of the Corporation, and shall not be cumulative, and, except the preference described in Section 1(a) hereof, no right shall accrue to holders of Common Stock or Series A Preferred under this Section 1, by reason of the fact that dividends on said shares are not declared in any prior period.

2. Liquidation Preference. In the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary, distributions to the stockholders of the Corporation shall be made in the following manner:

(a) Series A Preferred Preference. The holders of Series A Preferred shall be entitled to receive prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock of the Corporation, an amount equal to \$4.35 per share plus a further amount equal to any dividends declared but unpaid on such shares (the "Series A Preference"). If upon such liquidation, dissolution or winding up of the Corporation, the assets and funds of the Corporation are insufficient to permit the payment of the Series A Preference, the entire assets and funds legally available for distribution shall be distributed ratably among the holders of the Series A Preferred in proportion to the amount of Series A Preferred owned by each such holder.

(b) Remaining Assets. After payment or setting apart of payment of the Series A Preference, the remaining assets and funds of the Corporation shall be distributed ratably among the holders of Common Stock in proportion to the amount of Common Stock owned by each such holder.

(c) Reorganization or Merger. A merger or reorganization of the Corporation with or into any other corporation or corporations or a sale of all or substantially all of the assets of the Corporation, in which transaction the Corporation's stockholders immediately prior to such transaction own immediately after such transaction less than fifty percent (50%) of the equity securities of the surviving corporation or its parent, shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 2; provided that the holders of Series A Preferred and Common Stock shall be paid in cash or in securities received or in a combination thereof (which combination shall be in the same proportions as the consideration received in the transaction). Any securities to be delivered to the holders of the Series A Preferred and Common Stock upon a merger, reorganization or sale of substantially all of the assets of the Corporation 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 or NASDAQ, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty (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 in good faith by the board of directors of the 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 pursuant to Section 2(c)(i)(A), (B) or (C) hereof to reflect the approximate fair market value thereof, as determined in good faith by the board of directors of the Corporation.

(d) In the event the requirements of this Section 2 are not complied with, the Corporation shall forthwith either:

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

(ii) cancel such transaction, in which event the rights, preferences, privileges and restrictions of the holders of the Series A Preferred shall revert to and be the same as such rights, preferences, privileges and restrictions existing immediately prior to the date of the first notice referred to in Section 2(e) hereof.

(e) The Corporation shall give each holder of record of Series A Preferred written notice of such a transaction described in Section 2(c) hereof not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (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 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of a majority of the shares of Series A Preferred then outstanding, which written consent of such majority will be binding on all shares of Series A Preferred.

3. Voting Rights.

(a) General. Except as otherwise required by law or by Section 5 hereof, each share of Common Stock issued and outstanding shall have one vote and each share of Series A Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Series A Preferred could be converted at the record date for determination of the stockholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited, such votes to be counted together with all other shares of the Corporation having general voting power and not separately as a class. Fractional votes by the holders of Series A Preferred shall not, however, be permitted and any fractional voting rights shall (after aggregating all shares into which shares of Series A Preferred held by each holder could be converted) be rounded down to the nearest whole number.

(b) Election of Directors. At each election of directors, (i) the holders of the Series A Preferred, voting as a separate class, shall be entitled to elect one (1) member of the Corporation's board of directors, (ii) the holders of Common Stock, voting as a separate class, shall be entitled to elect four (4) members of the Corporation's board of directors, and (iii) any remaining directors shall be elected by the holders of the Series A Preferred Stock and Common Stock, voting together as a single class. Any director who was elected by a specified series, class or classes of shares may be removed during his or her term of office, either for or without cause, by, and only by, the affirmative vote of a majority of the shares of the series, class or classes of shares which initially elected such director. Such vote may be given at a special meeting of the stockholders duly called or by an action by written consent for that purpose. Vacancies on the board of directors may be filled by a majority of the remaining directors originally elected by the same series, class or classes of shares who could elect an individual to fill such vacancy on the board of directors, though less than a quorum, except that a vacancy created by the removal of a director by court order may be filled by only the vote of the outstanding shares entitled to vote thereon represented at a duly held meeting at which a quorum is present, or by an action by written consent for that purpose. Each director so elected shall hold office until the next annual meeting of stockholders or until a successor has been elected and qualified. The stockholders of the specified series or class entitled to vote upon the election of any director from which a vacancy arose may elect a director at any time to fill such vacancy not filled by the directors.

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

(a) Right to Convert. Each share of Series A Preferred 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 Preferred, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Issuance Price by the Conversion Price, determined as hereinafter provided, in effect at the time of the conversion (the "Conversion Rate"). The Issuance Price for the Series A Preferred shall be \$4.35 per share. The Conversion Price for the Series A Preferred shall initially be \$4.35 per share. Such initial Conversion Price shall be subject to adjustment as hereinafter provided.

(b) Automatic Conversion. Each share of Series A Preferred shall automatically be converted into shares of Common Stock at the then effective Conversion Rate (i) immediately prior to 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 in which the public offering price exceeds (prior to underwriter's discounts or commissions and offering expenses) \$15.00 per share (adjusted for any subsequent stock splits, stock dividends, reclassifications or recapitalizations), the aggregate gross proceeds raised exceeds \$20,000,000 and the pre-offering enterprise valuation is \$100,000,000 or greater (the "IPO") or (ii) the date upon which the Corporation obtains the consent of a majority of the shares of Series A Preferred then outstanding, which written consent of such majority will be binding upon all shares of Series A Preferred. In the event of the automatic conversion of the Series A Preferred upon an IPO, the person(s) entitled to receive the Common Stock issuable upon such conversion of Series A Preferred shall not be deemed to have converted such Series A Preferred until immediately prior to the closing of such sale of securities.

(c) Mechanics of Conversion.

(i) Before any holder of Series A Preferred shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred, and shall give written notice to the Corporation at such office that such holder elects to convert the same; provided, however, that in the event of an automatic conversion pursuant to Section 4(b) hereof, the outstanding shares of Series A Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Series A Preferred are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder of

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

(d) Fractional Shares. In lieu of any fractional shares to which the holder of Series A Preferred would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred of each holder at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(e) Adjustments to Conversion Price for Diluting Issues.

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

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

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

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

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

(1) as a dividend or distribution on Series A Preferred;

- (2) by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock excluded from the definition of Additional Shares of Common Stock by Section 4(e)(i)(D)(1) hereof; or
- (3) upon conversion of shares of Series A Preferred.

(E) "Rights to Acquire Common Stock" (or "Rights") shall mean all rights whenever issued by the Corporation to acquire Common Stock by exercise of a warrant, option or similar call or conversion of any existing instruments, in either case for consideration fixed, in amount or by formula, as of the date of issuance.

(ii) *No Adjustment of Conversion Price.* No adjustment of the number of shares of Common Stock into which the Series A Preferred is convertible shall be made, by adjustment in the applicable Conversion Price thereof: (A) unless the consideration per share (determined pursuant to Section 4(e)(v)) hereof for Additional Shares of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price in effect on the date of, and immediately prior to, the issue of such Additional Shares of Company Stock, (B) if prior to such issuance, the Corporation receives written notice from holders of at least sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred agreeing that no such adjustment shall be made as the result of the issuance of Additional Shares of Common Stock, which written notice will be binding upon all shares of Series A Preferred, or (C) notwithstanding anything to the contrary set forth herein (including, Section 4(e)(iii) hereof), with respect to the issuance by the Corporation of (1) up to 300,000 shares of Common Stock upon exercise of stock options or warrants issued to employees, directors, consultants, strategic partners, lenders and vendors of the Company and (2) up to 1,700,000 shares of Common Stock under the Corporation's current stock option plan; provided, that, the issuances of Common Stock described in the foregoing clause (C) shall not include the issuance by the Corporation of any shares of Common Stock upon the exercise of any stock option or warrant held by (x) Dina Bitten, or (y) to the extent unrelated to his existing 400,000 stock options, George Billman.

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

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

(B) Upon the expiration or termination of any unexercised Options or Rights, the Conversion Price shall not be readjusted, but the Additional Shares of Common Stock deemed issued as the result of the original issue of such Options or Rights shall not be deemed issued for the purposes of any subsequent adjustment of the Conversion Price; and

(C) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any Options, Rights or Convertible Securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price then in effect shall forthwith be readjusted (but not upwards) to such Conversion Price as would have been obtained had the adjustment that was made upon the issuance of such Options, Rights or Convertible Securities not exercised or converted prior to such change been made upon the basis of such change, but no further adjustment shall be made for the actual issuance of Common Stock upon the exercise or conversion of any such Options, Rights or Convertible Securities.

(iv) *Adjustment of Conversion Price upon Issuance of Additional Shares of Common Stock.* If the Corporation shall at any time after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(e)(iii) hereof, but excluding shares issued as a dividend or distribution as provided in Section 4(g) hereof or upon a stock split or combination as provided in Section 4(f) hereof), without consideration or for a consideration per share less than the applicable 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) equal to the amount of the consideration per share received by the Corporation for such Additional Shares of Common Stock. Notwithstanding the foregoing, the applicable Conversion Price shall not be reduced (A) to an amount less than \$.01 per share or (B) if the amount of such reduction would be an amount less than \$.01, but any such amount shall be carried forward and reduction with respect thereto made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$.01 or more.

(v) *Determination of Consideration.* For purposes of this Section 4(e), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

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

- (2) Insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the board of directors of the Corporation; and
- (3) In the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in Sections 4(e)(v)(A)(1) and (2) hereof, as determined in good faith by the board of directors of the Corporation.

(B) Options, Rights 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 4(e)(iii) hereof, relating to Options, Rights and Convertible Securities, shall be determined by dividing

- (1) The total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options, Rights 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, Rights or the conversion or exchange of such Convertible Securities, by
- (2) 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 Rights or the Conversion or exchange of such Convertible Securities.

(f) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of the outstanding Common Stock, the Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock, the Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(f) shall become effective at the close of business on the date the subdivision or combination becomes effective.



(g) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date shall make or issue a dividend or other distribution payable in Additional Shares of Common Stock, then and in each such event the Conversion Price shall be decreased as of the time of such issuance, by multiplying the Conversion Price by a fraction;

(i) The numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and

(ii) The denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

(h) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date shall make or issue a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, then and in each such event provision shall be made so that the holders of shares of the Series A Preferred shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation that they would have received had their Series A Preferred been converted on the date of such event and had thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period given application to all adjustments called for during such period, under this Section 4(h) with respect to the rights of the holders of the Series A Preferred.

(i) Adjustment for Reclassification, Exchange, or Substitution. If the Common Stock issuable upon the conversion of the Series A Preferred shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation, share exchange or sale of assets for below), then and in each such event the holder of each share of Series A Preferred shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification, or other change, by holders of the number of shares of Common Stock into which such shares of Series A Preferred might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(j) Adjustment for Merger or Reorganization, etc. In case of any consolidation, merger or share exchange of the Corporation with or into another corporation or the sale of all or substantially all of the assets of the Corporation to another corporation to which the holders of Series A Preferred shall have consented in accordance with Section 3 or 5 hereof, as the case may be, then each share of Series A Preferred shall thereafter be convertible into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Series A Preferred would have been entitled upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in

good faith by the board of directors of the Corporation) shall be made in the application of the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Series A Preferred.

(k) No Impairment. The Corporation will not, by amendment of its Restated Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, share exchange, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred against impairment.

(l) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred a certificate setting forth such adjustment and showing in detail the facts upon which such adjustment or readjustment is based and shall file a copy of such certificate with its corporate records. The Corporation shall, upon the written request at any time of any holder of Series A Preferred, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which then would be received upon the conversion of Series A Preferred. Despite such adjustment or readjustment, the form of each or all stock certificate representing Series A Preferred, if the same shall reflect the initial or any subsequent Conversion Price, need not be changed in order for the adjustments or readjustments to be valued in accordance with the provisions of this Restated Certificate of Incorporation, which shall control.

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

(i) that the Corporation declares a dividend (or any other distribution) on its Common Stock;

(ii) that the Corporation subdivides or combines its outstanding shares of Common Stock;

(iii) of any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution thereon), or of any consolidation, merger or share exchange of the Corporation into or with another corporation, or of the sale of all or substantially all of the assets of the Corporation; or

(iv) of the involuntary or voluntary dissolution, liquidation or winding up of the Corporation;

then the Corporation shall cause to be filed at its principal office and shall cause to be mailed to the holders of the Series A Preferred at their last addresses as shown on the records of the Corporation, at least twenty (20) days prior to the record date specified in (A) below or 20 days before the date specified in (B) below, a notice stating

(A) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as to which the holders of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or

(B) the date on which such reclassification, consolidation, merger, share exchange, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution or winding up.

5. Protective Provisions. So long as any shares of Series A Preferred shall be outstanding, the Corporation shall not without first obtaining the affirmative vote or written consent of more than sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of the outstanding Series A Preferred:

(a) alter or change the rights, preferences or privileges of the Series A Preferred;

(b) authorize or issue any new class or series of equity securities having any priority as to distribution of assets upon liquidation, merger or otherwise which is on parity with or superior to the priority of the Series A Preferred then outstanding;

(c) increase the total number of authorized shares of Common Stock or Series A Preferred;

(d) amend or modify the Restated Certificate of Incorporation or the Bylaws of the Corporation if such amendment or modification would adversely affect the rights, preferences, restrictions or privileges of the Series A Preferred;

(e) increase the size of the board of directors of the Corporation to a number greater than five (5);

(f) consummate a merger, corporate reorganization, or any transaction in which all or substantially all of the assets of the Corporation are sold, or in which the Corporation's stockholders immediately prior to such transaction own immediately after such transaction less than fifty percent (50%) of the equity securities of the surviving corporation or its parent, other than solely for the purpose of changing the jurisdiction of the Corporation, unless the holders of the Series A Preferred shall receive gross proceeds of at least \$20.00 per share of Series A Preferred (adjusted for any subsequent stock splits, stock dividends, reclassifications or recapitalizations); or

(g) consummate any transaction with any affiliate of the Corporation which would affect the rights, preferences or privileges of the holders of the Series A Preferred materially and adversely.

Additionally, without first obtaining the affirmative vote or written consent of more than sixty-six and two-thirds percent (66 2/3%) of the Series A Preferred issued on the Original Issue Date, the Corporation shall not issue any shares of Series A Preferred in addition to those shares which are issued on the Original Issue Date.

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

## ARTICLE VI

The number of directors may be either increased or diminished from time to time, as provided in the bylaws of the Corporation, but will never be less than five (5).

## ARTICLE VII

1. 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 (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (c) under Section 174 of the GCL, or (d) for any transaction from which the director derived an improper personal benefit. If the GCL is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the GCL, as so amended. Any repeal or modification of the provisions of this Article VII by the stockholders 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.

2. The Corporation shall indemnify any person who is or was a party to any proceeding by reason of the fact that such person is or was a director or officer of the Corporation or its subsidiaries, to the fullest extent not prohibited by law, for actions taken in the capacity of such person as a director or officer of the Corporation or its subsidiaries. To the fullest extent not prohibited by law, the Corporation shall advance indemnification expenses for actions taken in the capacity of such person as an officer or director, within twenty (20) days after receipt by the Corporation of (a) a written statement requesting such advance, (b) evidence of the expenses incurred, and (c) a written statement by or on behalf of such person agreeing to repay the advanced expenses if it is ultimately determined that such person is not entitled to be indemnified against such expenses.

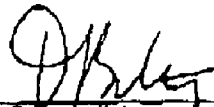
3. The Corporation, by action of the board of directors of the Corporation, in its sole discretion, may indemnify any person who is or was a party to any proceeding, by reason of the fact that such person is or was an employee or agent of the Corporation or its subsidiaries, to the fullest

extent not prohibited by law, for actions taken in the capacity of such person as an employee or agent of the Corporation or its subsidiaries. The Corporation by action of the board of directors of the Corporation, in its sole discretion, may advance indemnification expenses for actions taken in the capacity of such person as an employee or agent, after receipt by the Corporation of (a) a written statement requesting such advance, (b) evidence of the expenses incurred, and (c) a written statement by or on behalf of such person agreeing to repay the advanced expenses if it is ultimately determined that such person is not entitled to be indemnified against such expenses. Absent specific action by the board of directors of the Corporation, the authority granted to the board of directors of the Corporation in this Section 3 shall create no rights in the persons eligible for indemnification or advancement of expenses and shall create no obligations of the Corporation relating thereto.

IN WITNESS WHEREOF, the Corporation has caused this Restated Certificate of Incorporation to be executed by its duly authorized officer this 5th day of April, 2000.

IDS INTEGRATED DATA SYSTEMS  
CORPORATION, a Delaware corporation

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

  
Dina Bitton

Its: \_\_\_\_\_

PRESIDENT

LA221708.3

**CERTIFICATE OF AMENDMENT**  
**OF**  
**RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**IDS INTEGRATED DATA SYSTEMS CORPORATION**

IDS Integrated Data Systems Corporation, a Delaware corporation (the "Corporation"), does hereby certify:

FIRST: That Article 1 of the Certificate of Incorporation of the Corporation is hereby amended to read in its entirety as follows:

"The name of the Corporation is Callixa Corporation."

SECOND: That said amendment was duly adopted in accordance with Section 242 and Section 228 of the Delaware General Corporation Law.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed by its duly authorized officer this 9<sup>th</sup> day of August, 2000.

IDS INTEGRATED DATA SYSTEMS  
CORPORATION, a Delaware corporation

By:   
Dina Bitton, President

CC273838.1  
00967203976

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 09:00 AM 08/10/2000  
001406244 - 2916036

**TRADEMARK**

**RECORDED: 07/30/2001**

**REEL: 002344 FRAME: 0612**