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Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002)



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

Tab settings

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

1. Name of conveying party(ies): eNow, Inc.

3.18.03

- Individual(s), General Partnership, Corporation-State (checked), Other, Association, Limited Partnership

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

2. Name and address of receiving party(ies)

Name: The Relegence Corporation

Internal Address:

Street Address: 450 Seventh Avenue, Suite 2102

City: New York State: NY Zip: 10123

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State Delaware (checked), Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (checked) (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No (checked)

3. Nature of conveyance:

- Assignment, Security Agreement, Other, Merger, Change of Name (checked)

Execution Date: April 23, 2002

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

A. Trademark Application No.(s) 76/393038

B. Trademark Registration No.(s)

Additional number(s) attached Yes No (checked)

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

Name: Robert F. Zielinski

Internal Address: Wolf, Block, Schorr and Solis-

Cohen LLP

Street Address: 1650 Arch Street, 22nd Floor

City: Philadelphia State: PA Zip: 19103

6. Total number of applications and registrations involved: 1

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

- Enclosed (checked), Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Robert F. Zielinski Name of Person Signing

Handwritten signature

Signature

3/13/03 Date

26 Total number of pages including cover sheet, attachments, and document:

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40.00 DP

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

TRADEMARK REEL: 002695 FRAME: 0086

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 06:00 PM 04/23/2002
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**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF eNOW, INC.**

eNow, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), certifies that:

A. The original name of the Corporation is Chatscan, Inc. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on August 24, 1999.

B. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Certificate restates, integrates and further amends the provisions of the Corporation's Certificate of Incorporation.

C. The Stockholders of the Corporation, in accordance with Section 228 of the General Corporation Law of the State of Delaware, have consented to this Amended and Restated Certificate of Incorporation.

D. The text of the Certificate of Incorporation is amended and restated to read as follows:

ARTICLE ONE

The name of the Corporation is "The Relegence Corporation"

ARTICLE TWO

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE THREE

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

ARTICLE FOUR

A. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares the Corporation is authorized to issue is two hundred million (200,000,000) shares, of which (i) one hundred thirty-five million (135,000,000) shares shall be Common Stock, par value \$0.001 per share, and (ii) sixty-five million (65,000,000) shares shall be Preferred Stock, par value \$0.001 per share, of which nine

hundred and seventy-five thousand (975,000) shares shall be designated "Series A Preferred," two million seven hundred and three thousand seven hundred sixty-seven (2,703,767) shares shall be designated "Series B Preferred," and sixty-one million (61,000,000) shares shall be designated "Series C Preferred."

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

The relative rights, preferences, privileges and restrictions granted to or imposed on the Series A Preferred, Series B Preferred and Series C Preferred (collectively, the "Preferred") are set forth below in this Article IV(B). The Series C Preferred shall rank senior to the Series A Preferred, Series B Preferred and the Common Stock, and any other class or series of capital stock, as to dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntarily or involuntarily.

1. Dividends.

(a) Dividends on the Series C Preferred shall accrue cumulatively each quarter, whether or not such dividends have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends, at the rate of 8% per annum of the Original Series C Issue Price for each share of Series C Preferred held by such holder ("Base Dividends"). The "Original Series C Issue Price" of each share of Series C Preferred shall be \$0.20509 (as adjusted for any stock split, dividends or combinations, with respect to such shares and the like (collectively, "Recapitalizations")). All accrued but unpaid dividends on the Series C Preferred shall be declared and paid in full, out of funds legally available therefore, upon the earliest to occur of: (i) the conversion of the Series C Preferred into Common Stock, as provided in Section 3, below, (ii) a Liquidation Event (as defined below), or (iii) the redemption of such shares of Series C Preferred. All dividends payable to the holders of the Series C Preferred shall be payable, at the written election of such holder, in either cash or in such number of additional shares of Series C Preferred as is equal to the amount of accrued but unpaid dividends owed due to such holder divided by the Original Series C Issue Price.

(b) The holders of shares of Series A Preferred and Series B Preferred shall be entitled to receive dividends, when and if declared by the Board of Directors, out of funds legally available therefor, payable in preference and priority to any payment of any dividend on the Common Stock of the Corporation, at the rate of (x) \$0.0820 per share per annum for each share of Series A Preferred, and (y) \$0.3428 per share per annum for each share of Series B Preferred (as adjusted for any Recapitalizations with respect to such shares). Such dividends shall not be cumulative and shall be paid only when and if declared by the Board of Directors of the Corporation. If any dividends are paid on shares of either the Series A Preferred or Series B Preferred, dividends shall be paid on shares of both the Series A Preferred and Series B Preferred on a pro rata basis based on the foregoing dividend rates. Notwithstanding any other provision to the contrary, unless and until full cumulative Base Dividends on the shares of Series C Preferred in respect of all past quarterly dividend periods have been paid, and the amount of Base Dividends on the shares of Series C Preferred in respect of the then current quarterly dividend period based on the actual number of days elapsed in such quarter shall have been or are contemporaneously declared in full and sums set aside

in trust for the payment thereof, (i) no dividends shall be paid or declared or set aside for payment or other distribution upon any capital stock of the Corporation or any Subsidiary and (ii) no shares of capital stock of the Corporation or any Subsidiary shall be redeemed, retired, purchased or otherwise acquired for any consideration (or any payment made to or available for a sinking fund for the redemption of any such shares) by the Corporation or any Subsidiary other than pursuant to (x) the Hudson Side Letter (as defined in the Series C Preferred Stock Purchase Agreement, dated as of August 17, 2001 among the Corporation and those certain investors party thereto (the "Purchase Agreement")) and (y) any option plan or option agreement authorized by the Corporation's Board of Directors ("Authorized Option Plan"). For the purposes hereof, a "Subsidiary" shall mean any corporation, association, partnership, limited liability company, joint venture or other business entity (i) at least 50% of the outstanding voting securities of which are at the time owned or controlled, directly or indirectly, by the Corporation; or (ii) with respect to which the Corporation possesses, directly or indirectly, the power to direct or cause the direction of the affairs or management of such person.

(c) So long as any shares of Series C Preferred remain outstanding, the Corporation shall not, without the approval of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the outstanding shares of Series C Preferred, pay dividends on any shares of Common Stock, Series A Preferred or Series B Preferred; *provided, however*, that the Corporation may repurchase unvested shares, at cost, from officers, directors, employees and consultants pursuant to the terms of the agreements providing for the initial issuance of such unvested shares.

(d) Prior to declaring any dividend or making any distribution on or with respect to shares of Common Stock, the Corporation shall take all prior corporate action necessary to authorize the issuance of any securities payable as a dividend in respect of the Series C Preferred.

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

(a) The holders of Series C Preferred shall be entitled to receive, prior to and in preference to any distribution of any of the assets or surplus funds of the Corporation to holders of the Common Stock or holders of Series A Preferred or Series B Preferred by reason of their ownership of such stock, an amount per share equal to the sum of (x) the Original Series C Issue Price for each share of Series C Preferred held by record of such holder (as adjusted for any Recapitalizations with respect to such share), (y) Base Dividends and (z) all declared but unpaid accrued dividends on such shares. If the assets and funds thus distributed among the holders of the Series C Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series C Preferred in proportion to the aggregate preferential amount of shares of the Series C Preferred outstanding as of the date of the distribution upon the occurrence of such event.

(b) After the liquidation preference has been paid in full pursuant to clause (a) above, the holders of Series B Preferred shall be entitled to receive, prior to and in preference to any

distribution of any of the assets or surplus funds of the Corporation to holders of the Common Stock or holders of Series A Preferred by reason of their ownership of such stock, an amount per share equal to the sum of (x) \$3.8095 (the "Original Series B Issue Price") for each share of Series B Preferred held by record of such holder (as adjusted for any Recapitalizations with respect to such share) and (y) all declared but unpaid accrued dividends on such shares. If the assets and funds thus distributed among the holders of the Series B Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution following payment of the liquidation preference in full pursuant to clause 2(a) above shall be distributed ratably among the holders of the Series B Preferred in proportion to the aggregate preferential amount of shares of the Series B Preferred outstanding as of the date of the distribution upon the occurrence of such event.

(c) After the liquidation preference has been paid in full pursuant to clause (b) above, 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 the Common Stock by reason of their ownership of such stock, an amount per share equal to the sum of (x) \$1.0256 (the "Original Series A Issue Price") for each share of Series A Preferred then held by record by such holder (as adjusted for any Recapitalizations with respect to such shares), and (y) all declared but unpaid dividends on such shares. If the assets and funds thus distributed among the holders of the Series A Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution following payment of the liquidation preference in full pursuant to clauses 2(a) and 2(b) above shall be distributed ratably among the holders of the Series A Preferred in proportion to the aggregate preferential amount of shares of the Series A Preferred outstanding as of the date of the distribution upon the occurrence of such event.

(d) After the liquidation preference has been paid in full pursuant to clause (c) above, the entire remaining assets and funds of the Corporation legally available for distribution, shall be distributed among the holders of Series C Preferred, the Series A Preferred and the Series B Preferred and the Common Stock ratably in proportion to the Common Stock issued or issuable upon conversion of stock then held by such holders, until the total amount paid (i) with respect to the Series C Preferred pursuant to Section 2 is equal to 300% of the Original Series C Issue Price and (ii) with respect to the Series A Preferred and Series B Preferred, the total amount paid with respect to such shares pursuant to Section 2 is equal to 150% of the Original Series A Issue Price and Original Series B Issue Price, respectively; and thereafter, all remaining assets or surplus funds shall be distributed solely to the holders of the Common Stock.

(e) For purposes of this Section 2, a merger or consolidation of the Corporation with or into any other corporation or corporations, or the merger or consolidation of any other corporation or corporations into the Corporation, or the sale of all or substantially all of the assets of the Corporation, or an acquisition of the Corporation's capital stock or any other corporate reorganization, shall be treated as a Liquidation Event unless the stockholders of the Corporation immediately prior to such consolidation, merger, sale of assets, acquisition or reorganization hold more than fifty percent (50%) of the voting equity securities of the successor or surviving corporation immediately following such consolidation, merger, sale of assets, acquisition or

reorganization, in which case such consolidation, merger, sale of assets, acquisition or reorganization shall not be treated as a Liquidation Event.

(i) In any of such Liquidation Events, if the consideration received by the Corporation is other than cash or securities, its value will be deemed its fair market value as determined in good faith by the Board of Directors. Any securities shall be valued as follows:

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

(1) If traded on a securities exchange or through the Nasdaq National Market or Nasdaq Small Cap Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty (30) day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

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

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined by the Board of Directors.

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

(a) Right to Convert. Each share of Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such shares at the office of the Corporation or any transfer agent for the Preferred. Each share of Preferred shall be convertible into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) in the case of the Series A Preferred, the Original Series A Issue Price in respect of such share by the Series A Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion, (ii) in the case of the Series B Preferred, the Original Series B Issue Price in respect of such share by the Series B Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion, and (iii) in the case of the Series C Preferred, the sum of the Original Series C Issue Price in respect of such share by the Series C Conversion Price applicable to such share plus Base Dividends plus accrued but unpaid dividends, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial "Series A Conversion Price" per share shall be the Original Series A Issue Price, the initial "Series B Conversion Price" per share shall be the Original Series B

Issue Price, and the initial "Series C Conversion Price" per share shall be the Original Series C Issue Price (the Series A Conversion Price, the Series B Conversion Price and the Series C Conversion Price are individually or collectively referred to herein as the "Conversion Price"); *provided, however*, that in each case such Conversion Price shall be subject to adjustment as set forth below.

(b) Automatic Conversion. Each share of Preferred shall automatically be converted into shares of Common Stock at the then effective Conversion Price for such series upon the earlier of (i) the closing of an underwritten public offering pursuant to an effective registration statement on Form S-1, SB-2 or any successor form under the Securities Act of 1933, as amended, covering the offer and sale of the Common Stock for the account of the Corporation to the public with an aggregate offering price to the public of not less than \$30,000,000 and the offering price per share is at least \$0.41018 (as adjusted for Recapitalizations) (an "IPO") or (ii) upon the election of holders of at least sixty-six and two-thirds (66 2/3%) of the outstanding shares of the Series C Preferred. In the event of the automatic conversion of the Preferred upon an IPO, the person(s) entitled to receive the Common Stock issuable upon such conversion of Preferred shall not be deemed to have converted such Preferred until immediately prior to the closing of such sale of securities.

(c) Mechanics of Conversion. Before any holder of Preferred shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, the holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred, and shall give written notice to the Corporation at such office that the holder elects to convert the same; *provided, however*, that in the event of an automatic conversion pursuant to Section 3(b), the outstanding shares of 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 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 reasonably 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 Preferred, a certificate or certificates for the number of shares of Common Stock to which such 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 Preferred to be converted, or in the case of automatic conversion pursuant to an IPO, then on the date of closing of the IPO, 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.

(d) (1) Adjustment of Conversion Price. The Conversion Price shall be subject to adjustment from time to time as follows:

(i) Adjustments for Subdivisions, Combinations or Consolidations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided by stock split, stock dividends or otherwise, into a greater number of shares of Common Stock, the Conversion Price then in effect shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Conversion Price then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(ii) Adjustments for Stock Dividends and Other Distributions. In the event the Corporation at any time after the Original Issue Date (as defined below) declares a distribution (excluding any repurchases of securities by the Corporation not made on a pro rata basis from all holders of any class of the Corporation's securities) payable in property or in securities of the Corporation other than shares of Common Stock, and other than as otherwise adjusted in this Section 3 or as provided in Section 1, then and in each such event, the holders of Preferred shall receive at the time of such distribution, the amount of property or the number of securities of the Corporation that they would have received had their Preferred been converted into Common Stock on the date of such event.

(iii) Adjustments for Reclassification, Exchange and Substitution. Except as provided in Section 2, upon any liquidation, dissolution or winding up of the Corporation, if the Common Stock issuable upon conversion of the Preferred shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), each share of Preferred shall thereafter be convertible into the number 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 share of Preferred shall have been entitled upon such reorganization or reclassification.

(2) Adjustments of Conversion Price for Diluting Issues. In addition to the adjustment of the Conversion Price provided in Section 3(d)(1) above, the Conversion Price shall be subject to further adjustment from time to time as follows:

(i) Special Definitions. For purposes of this Section 3(d)(2), the following definitions shall apply:

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

(2) "Original Issue Date" shall mean the date on which the first share of Series C Preferred was issued.

(3) "Convertible Securities" shall mean securities convertible into or exchangeable for Common Stock.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 3(d)(2)(iii), deemed to be issued) by the Corporation after the Original Issue Date other than shares of Common Stock issued (or, pursuant to Section 3(d)(2)(iii), deemed to be issued):

(A) any shares of Common Stock issuable upon the conversion of shares of the Preferred;

(B) securities issued to banks, landlords, lenders or equipment lessors in connection with debt financings approved by the Board of Directors;

(C) securities issued to a strategic partner as an equity incentive, if approved by the Board of Directors, where the primary purpose is not a financing

(D) securities offered to the public pursuant to an IPO;

(E) securities issued pursuant to a strategic acquisition by the Corporation by merger, asset purchase, or any other reorganization provided that the Corporation is the surviving corporation after such transaction;

(F) securities issued in connection with any stock split, subdivision, stock dividend or recapitalization by the Corporation; or

(G) any stock or stock purchase rights issued to officers, directors, employees or consultants under a stock option plan approved by the Board of Directors.

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price of a particular share of Preferred 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 applicable Conversion Price in effect on the date of, and immediately prior to such issue.

(iii) Deemed Issue of Additional Shares of Common Stock.

(1) Options and Convertible Securities. Except as otherwise provided in Section 3(d)(2)(i)(4)(A) - (F) and 3(d)(2)(ii), 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 any 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 therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which additional shares of Common Stock are deemed to be issued:

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

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase 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;

(C) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price 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:

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

(II) 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, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

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

(E) in the case of any Options which expire by their terms not more than thirty (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.

(iv) **Adjustment of Series C Conversion Price Upon Issuance of Additional Shares of Common Stock.** In the event that at any time after the Original Issue Date the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 3(d)(2)(iii)) without consideration or for a consideration per share less than the Series C Conversion Price in effect on the date of and immediately prior to such issuance, then and in such event, the Series C Conversion Price shall be reduced concurrently with such issuance to a price equal to the amount of the per share consideration of such Additional Shares of Common Stock. No adjustment of the Series C Conversion Price shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward.

(v) **Adjustment of Series A Conversion Price and Series B Conversion Price Upon Issuance of Additional Shares of Common Stock.** In the event that at any time after the Original Issue Date the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 3(d)(2)(iii)) without consideration or for a consideration per share less than the Series A Conversion Price or Series B Conversion Price, as applicable, in effect on the date of and immediately prior to such issuance, then and in such event, the applicable Conversion Price shall be reduced concurrently with such issuance to a price (calculated to the nearest cent) determined by multiplying the applicable Conversion Price in effect on the date of and immediately prior to such issuance by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance 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 the applicable Conversion Price in effect on the date of and immediately prior to such issuance; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of such Additional Shares of Common Stock so issued; *provided, however*, that, for the purposes of this Section 3(g)(v), all shares of Common Stock issuable upon exercise, conversion or exchange or outstanding Options or Convertible Securities, as the case may be, shall be deemed to be outstanding, and immediately after any Additional Shares of Common are deemed issued pursuant to Section 3(g)(iii), such Additional Shares of Common shall be deemed to be outstanding. No adjustment of the Conversion Price for the Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward.

(vi) **Determination of Consideration.** For purposes of this Section 3(d)(2), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) **Cash and Property.** Such consideration shall:

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

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

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

(2) **Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 3(d)(2)(iii)(1), relating to Options and Convertible Securities, shall be determined by dividing

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

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

(e) **No Impairment.** The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 3 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred against impairment.

(f) No Fractional Shares: Certificate as to Adjustment.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Preferred, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 3, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the applicable Conversion Price for the Preferred at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred held by such holder.

(g) 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 then outstanding shares of the Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred, in addition to such other remedies as shall be available to the holder of such Preferred, 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 purposes, including without limitation engaging in best efforts to obtain the requisite Board of Directors and stockholder approval of any necessary amendment to this Restated Certificate of Incorporation.

(h) 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 capitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iv) to merge or consolidate with or into any other Corporation, or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up;

then, in connection with each such event, the Corporation shall send to the holders of Preferred:

(1) at least twenty (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 shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (i) and (ii) above; and

(2) in the case of the matters referred to in (iii) and (iv) above, at least twenty (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 shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

Each such written notice shall be delivered personally or given by first class mail, postage prepaid, addressed to the holders of the Preferred at the address for each such holder as shown on the books of the Corporation.

(i) Other Anti-Dilution Provisions. If the Corporation has issued or issues any securities at a pre-investment valuation (on a fully diluted basis) of the Corporation of not more than \$10,000,000 (excluding the proceeds received in the Initial Closing, the Second Closing and the Additional Closing), using the same methodology used in valuing the Corporation in connection with the Corporation's issuance of the shares of Series C Preferred pursuant to the Purchase Agreement, on or prior to the first anniversary of the Original Issue Date, containing provisions (including, but not limited to, any of the terms of pricing, conversion price, exercise price, anti-dilution, liquidation, dividends, warrant coverage and registration rights) which are more favorable than those set forth herein, the Corporation will make such provisions (or any more favorable portion thereof) available to the holders of Series C Preferred and will use best efforts to enter into amendments necessary to confer such rights on the holders of Series C Preferred.

4. Notices. All notices and other communications required by the provisions of this Restated Certificate of Incorporation shall be in writing, shall be effective when given, and shall in any event be deemed to be given upon receipt or, if earlier, (a) five (5) days after deposit with the U.S. Postal Service or other applicable postal service, if delivered by first class mail, postage prepaid, (b) upon delivery, if delivered by hand, (c) one (1) business day after the business day of deposit with Federal Express or similar overnight courier, freight prepaid or (d) one (1) business day after the business day of facsimile transmission (with confirmation), if delivered by facsimile transmission with copy by first class mail, postage prepaid, and shall be addressed to each holder of record at his address appearing on the books of the Corporation.

5. Voting Rights.

(a) General Voting Rights. Each holder of shares of Preferred shall be entitled to a number of votes equal to the number of shares of Common Stock into which the shares of Preferred held by such holder could be converted, shall have voting rights and powers equal to the voting rights and powers of the holders of Common Stock (except as otherwise expressly provided herein or as required by law) and shall be entitled to notice of any stockholder meeting in accordance with the Bylaws of the Corporation and shall be entitled to vote, together with holders of Common Stock with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Required Series A Preferred and Series B Preferred Class Vote. In addition to any other rights provided by law, so long as at least an aggregate amount of 1,800,000 shares of Series A Preferred and Series B Preferred shall be outstanding (as adjusted for Recapitalizations), this Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of the voting power of the then outstanding shares of Series A Preferred and Series B Preferred, voting together as a single class and on an as converted basis, amend or repeal any provision of this Corporation's Amended and Restated Certificate of Incorporation or Bylaws if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of the Series A Preferred or Series B Preferred; issuance of shares of any series or class of capital stock junior to the Series A Preferred and Series B Preferred shall not be construed as materially and adversely changing the rights of the Series A Preferred or Series B Preferred.

(c) Required Series C Preferred Vote. In addition to any other rights required by law so long as shares of Series C Preferred shall be outstanding, this Corporation shall not, without first obtaining the affirmative vote or consent of the holders of not less than sixty-six and two-thirds percent (66 2/3%) of the voting power of the then outstanding Series C Preferred, voting as a separate series:

(i) authorize, agree to, or enter into any transaction or series of transactions that would result in a Liquidation Event or an initial public offering which does not qualify as an IPO pursuant to Section 3(b);

(ii) create or authorize the creation or increase the authorized amount of any class or series of shares of stock of the Corporation;

(iii) alter, amend or waive the rights, preferences or privileges of the Series C Preferred (whether by merger, consolidation, combination, reclassification or otherwise), increase or decrease the authorized number of shares of Series C Preferred or Common Stock or issue additional shares of Series C Preferred (other than in connection with the Second Closing or an Additional Closing);

(iv) increase the number of shares authorized to be issued under any stock option plan of the Corporation;

(v) create a new class of stock or shares with a preference senior to or on parity with the Series C Preferred with respect to voting, dividends, redemption or liquidation, or issue or grant any rights to acquire such equity;

(vi) increase or decrease the number of directors constituting the Board of Directors;

(vii) create a new subsidiary of the Corporation;

(viii) amend or repeal any provision of, or add any provision to, this Corporation's Restated Certificate of Incorporation or Bylaws (whether by merger, consolidation or otherwise);

(ix) substantially alter the Corporation's business as described in the Corporation's business plan, dated April 2001; or

(x) redeem, retire, purchase or acquire, directly or indirectly, any shares of Common Stock or Preferred, except repurchases of Common Stock at the original purchase price for such Common Stock from employees, officers, directors or consultants of the Corporation pursuant to the terms of their contract or agreements previously approved by the Board and except for redemptions of Preferred pursuant to such redemption provisions thereof as may be provided for in the Certificate of Incorporation of the Corporation from time to time, or pursuant to (i) the Hudson Side Letter (as defined in the Purchase Agreement) or (ii) any Authorized Option Plan;

(d) **Election of Directors.** The Board of Directors of the Corporation shall be comprised of seven (7) directors. The holders of a majority of Common Stock, voting as a class, shall have a right to appoint one (1) director (the "Common Representative"); the holders of a majority of Series A Preferred and Series B Preferred, voting together as a single class, shall have a right to appoint two (2) directors (the "Preferred Representatives"), so long as the Series A Preferred and Series B Preferred constitute at least 1% of the outstanding capital stock of the Company; the holders of a majority of Series C Preferred, voting as a class, shall have a right to appoint two (2) directors (the "Series C Representatives"); and two (2) directors shall be nominated by mutual agreement of the Series C Representatives, the Preferred Representatives and the Common Representatives. Notwithstanding anything contained in this Section 5(d) to the contrary, should the Corporation (x) have materially breached a representation, warranty or covenant in the Purchase Agreement, the Investor Rights Agreement dated as of August 17, 2001, by and among the Corporation and those certain investors party thereto (the "Investor Rights Agreement"), or the Stockholders Agreement dated as of August 17, 2001, by and among the Corporation and those certain stockholders party thereto (the "Stockholders Agreement"), or (y) fail for any reason (i) to pay the liquidation amount on the Series C Preferred under the conditions and in accordance with the terms of Section 2, (ii) to issue Common Stock upon conversion of the Series C Preferred as provided in Section 3, (iii) to redeem the Series C Preferred if required under the conditions and in accordance with the terms of Section 6, (iv) to honor the preemptive rights granted to holders of Series C Preferred in Section 7, or (v) to comply with the protective provisions of Section 5(c), and in each case should such failure continue for a period of ten (10) days after written notice to the

Corporation by a holder of Series C Preferred of such breach or failure (each a "Series C Voting Right Event"); then, in each case, at the end of such period and for so long as said Series C Voting Right Event remains uncured, the holders of Series C Preferred shall be entitled, voting together as a single class (whether at an annual meeting of the stockholders, at any special meeting called for such purpose, or by written consent), to elect the smallest number of members of the Board of Directors as is necessary so that directors elected by holders of Series C Preferred constitute a majority of the full Board of Directors. If, prior to the end of the term of any director elected as aforesaid by the holders of Series C Preferred, a vacancy in the office of such director shall occur by reason of death, resignation, removal or disability, or for any other reason, the right to fill such vacancy shall be vested in the holders of Series C Preferred unless the right of such holders to elect such director shall have ceased as provided hereafter. If, prior to the end of the term of any director elected as aforesaid by the holders of Series A Preferred and Series B Preferred, a vacancy in the office of such director shall occur by reason of death, resignation, removal or disability, or for any other reason, the right to fill such vacancy shall be vested in the holders of Series A Preferred and Series B Preferred unless the right of such holders to elect such director shall have ceased as provided hereafter. If, prior to the end of the term of any director elected as aforesaid by the holders of Common Stock, a vacancy in the office of such director shall occur by reason of death, resignation, removal or disability, or for any other reason, the right to fill such vacancy shall be vested in the holders of Common Stock unless the right of such holders to elect such director shall have ceased as provided hereafter.

At any time after occurrence of a Series C Voting Right Event, the Secretary of the Corporation may, and, upon the written request of the holders of record of ten percent (10%) or more of the then outstanding shares of the Series C Preferred, addressed to the Secretary at the principal office of the Corporation, shall, call a special meeting of the holders of Series C Preferred for the election of the directors to be elected by them as hereinabove provided, to be held within thirty (30) days after such call and at the place and upon the notice provided by law and in the Bylaws of the Corporation for the holding of meetings of stockholders. If any such special meeting required to be called as above provided shall not be called by the Secretary within thirty (30) days after receipt of any such request, then the holders of record of ten percent (10%) or more in amount of the Series C Preferred then outstanding may designate in writing one of their number to call such meeting, and the person so designated may call such meeting to be held at the place and upon the notice above provided, and for that purpose shall have access to the stock ledger of the Corporation. If any such special meeting shall be called by the Secretary of the Corporation or by the holders of the Series C Preferred as above provided, a quorum shall consist of the holders of at least a majority of the Series C Preferred then outstanding in person or represented by proxy at such meeting or any adjournment thereof. By vote of the holders of at least a majority of such Series C Preferred present or so represented at such meeting, the then authorized number of directors of the Corporation shall be increased by a number sufficient to enable the holders of the Series C Preferred to designate a majority of the members of the Board of Directors and, at such meeting, the holders of the Series C Preferred shall be entitled to elect the additional directors so provided for, but any directors so elected shall hold office only until their respective successors are duly elected and qualified at the annual meeting of stockholders or special meeting held in place thereof next succeeding their election (giving effect to the foregoing rights of the holders of Series C Preferred).

At such time, if any, as the action creating the Series C Voting Right Event shall have been corrected by the Corporation, then the terms of office of all persons elected as directors by such holders shall forthwith terminate, the number of directors shall be reduced accordingly, and the holders of Series C Preferred, if any, shall once again have rights with respect to the election of directors as are provided in the first sentence of this Section 5(d). The foregoing remedy shall not be deemed exclusive and shall be in addition to all other rights and remedies available at law or equity to the holders of Series C Preferred.

6. Redemption

(a) Mandatory Redemption - Series B Preferred and Series C Preferred. At any time (i) after 5 years from Original Issue Date or (ii) upon a Liquidation Event, the holders of the then outstanding shares of Series B Preferred and Series C Preferred shall have the right (a "Redemption Election") to require the Corporation to redeem any or all of such holders' shares of Series B Preferred or Series C Preferred, as applicable, to the extent permitted by applicable law, at the applicable Redemption Price (as defined below); *provided, however*, that the Corporation shall not be obligated to redeem any shares of Series B Preferred or Series C Preferred pursuant to this Section 6(a) unless and until the holders of sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of Series C Preferred have made such a Redemption Election.

(b) Series B Redemption Price. The redemption price for each share of Series B Preferred redeemed pursuant to this Section 6 shall be the sum of (x) the Original Series B Purchase Price (adjusted in the event of any Recapitalization of Series B Preferred), plus (y) a compounded annual increase of 10% per year (or, if lower, the maximum legal interest) on such Original Series B Purchase Price, provided that such compounded annual return amount shall be payable only to the extent of the Corporation's EBITDA for the three years preceding December 7, 2007 in the aggregate (the "Series B Redemption Price"). To the extent any portion of such compounded annual return was not previously paid due to the EBITDA limitation and thereafter becomes payable by reason of a change in the EBITDA limitation (e.g. because the Corporation has completed additional periods and achieved EBITDA in such periods), such portion shall be paid as soon as practical after so becoming payable.

(c) Series C Redemption Price. The redemption price for each share of Series C Preferred (the "Series C Redemption Price" and the Series C Redemption Price and the Series B Redemption Price, each, a "Redemption Price") redeemed pursuant to this Section 6 shall be equal to the greater of:

- (1) the sum of the Original Series C Issue Price plus Base Dividends plus any accrued but unpaid dividends;
- (2) an amount equal to that which each share of Series C Preferred would otherwise be entitled to receive in the event of a Liquidation Event; or
- (3) an amount equal to the percentage equity ownership interest of each such share in the Corporation multiplied by the fair market value of the Corporation as a whole

determined by an independent appraiser reasonably acceptable to the holders of the Series C Preferred, such appraisal to be performed at the Corporation's expense.

(d) Pro Rata Basis. In the event insufficient funds are available to redeem all shares of Series B Preferred and Series C Preferred entitled to be redeemed pursuant to Section 6(a) because of limitations imposed by law or any of the Corporation's debt agreements with third parties, the Corporation shall take all measures permitted under the DGCL to increase the amount of its capital and surplus legally available and shall effect such redemption: (i) first, to the extent there has been a Redemption Election by the Series C Preferred pursuant to Section 6(a), in priority to the redemption of any shares of Series B Preferred, pro rata among the holders of shares of the Series C Preferred and (ii) second, to the extent that sufficient funds are available and the preceding clause (i) has been satisfied, pro rata among the holders of shares of Series B Preferred. Such redemptions in accordance with the preceding sentence shall be made as soon as sufficient funds are legally available for such redemption, in one or more installments to be effected as soon as the Corporation is legally entitled to effect each such installment. In each such installment, the amount paid in redemption shall be the maximum payment allowable under such debt agreements or the maximum amount of funds legally available, as applicable, and at each such installment the Corporation shall redeem the Series C Preferred and the Series B Preferred, as the case may be, pro rata in proportion to the aggregate applicable Redemption Price of the shares so requested for redemption, such that the number of shares of Series C Preferred or Series B Preferred, as the case may be, owned by each holder to be redeemed by the Corporation shall be equal to the number obtained by multiplying (and rounding down to the next lowest whole number):

(1) the total amount of funds available for redemption, times

(2) a fraction, the numerator of which shall be the sum of (A) the number of shares requested to be redeemed by such holder in accordance with Section 6(a) times the applicable Redemption Price, and the denominator of which shall be the sum of (Y) the total number of shares of requested to be redeemed by all holders of Series C Preferred or Series B Preferred, as the case may be, in accordance with Section 6(a) times the applicable Redemption Price.

(e) Redemption Notice. At least thirty (30) days but no more than sixty (60) days prior to the date(s) fixed for redemption pursuant to Section 6(a) above (each, a "Redemption Date"), written notice (the "Redemption Notice") shall be mailed by certified mail, postage prepaid, by the Corporation to each holder of record of Series B Preferred and Series C Preferred at its address shown on the records of the Corporation. The Redemption Notice shall contain the following information:

(1) The number of shares of held by the holder which are eligible for redemption hereunder, the total number of shares of held by all holders for which the Corporation has received notice requesting redemption on the Redemption Date in the case of a redemption and the total number of shares of Preferred outstanding in the case of a redemption pursuant to Section 6(a);

(2) The Redemption Date and the Redemption Price; and

(3) That the holder, if it desires to participate in such redemption event, must surrender to the Corporation, at the place reasonably designated in such notice, the holder's certificate or certificates representing the shares to be redeemed.

(f) Payment and Surrender of Certificates. Each holder of shares of Preferred to be redeemed shall surrender the certificate or certificates representing such shares to the Corporation at the place reasonably designated in the Redemption Notice, and thereupon each surrendered certificate shall be canceled and retired and the applicable Redemption Price for such shares as set forth in Section 6(b) or (c), as applicable, shall be paid to the order of the person whose name appears on such certificate or certificates either (at the election of the holders of a majority of the outstanding Series C Preferred) (i) on such day in full or (ii) in six equal quarterly payments commencing on the Redemption Date and every three months thereafter, with interest at ten percent (10%), compounded annually.

(g) From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Preferred Stock designated for redemption on such date (except the right to receive the Redemption Price upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If fewer than all the shares represented by a surrendered certificate are redeemed, the Corporation shall issue a new certificate representing the unredeemed shares. The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein.

(h) After the occurrence of any Redemption Election, unless and until the full Redemption Price for the shares of Series C Preferred to be redeemed has been paid, or set aside in trust with a bank or trust company, (i) no dividends shall be paid or declared or set aside for payment or other distribution upon any capital stock of the Corporation or any Subsidiary and (ii) no shares of capital stock of the Corporation or any Subsidiary shall be redeemed, retired, purchased or otherwise acquired for any consideration (or any payment made to or available for a sinking fund for the redemption of any such shares) by the Corporation or any Subsidiary other than pursuant to (x) the Hudson Side Letter (as defined in the Purchase Agreement) and (y) any Authorized Option Plan. For the purposes hereof, a "Subsidiary" shall mean any corporation, association, partnership, limited liability company, joint venture or other business entity (i) at least 50% of the outstanding voting securities of which are at the time owned or controlled, directly or indirectly, by the Corporation; or (ii) with respect to which the Corporation possesses, directly or indirectly, the power to direct or cause the direction of the affairs or management of such person.

7. Preemptive Rights.

(a) The holders of shares of Series C Preferred shall have the right of first refusal to purchase any New Securities (as defined in Section 7(b), below) that the Corporation may, from time to time, propose to sell and issue, subject to the provisions of this Section 7.

(b) "New Securities" shall mean any Common Stock or preferred stock of the Corporation, whether now authorized or not, and rights, options or warrants to purchase said Common Stock or preferred stock, and securities of any type whatsoever that are, or may become, convertible into said Common Stock or preferred stock; *provided* that "New Securities" does not include (i) any shares of Common Stock issuable upon the conversion of shares of the Preferred; (ii) securities issued to banks, landlords, lenders or equipment lessors in connection with debt financings approved by the Board of Directors; (iii) securities issued to a strategic partner as an equity incentive, if approved by the Board of Directors, where the primary purpose is not a financing; (iv) securities offered to the public pursuant to an IPO; (v) securities issued pursuant to a strategic acquisition by the Corporation by merger, asset purchase, or any other reorganization provided that the Corporation is the surviving corporation after such transaction; (vi) securities issued in connection with any stock split, subdivision, stock dividend or recapitalization by the Corporation; or (vii) any stock or stock purchase rights issued to officers, directors, employees or consultants under a stock option plan approved by the Board of Directors.

(c) In the event the Corporation proposes to undertake an issuance of New Securities, it shall give each holder of shares of Series C Preferred written notice of such proposed issuance at least twenty (20) days prior to such proposed issuance, describing the type of New Securities, the price, the closing date of the offering thereof, and the general terms upon which the Corporation proposes to issue the same. Each holder of shares of Series C Preferred shall be entitled to purchase some or all of his or its pro rata portion of such New Securities for the price and upon the general terms specified in the notice (and in any case at a price and upon general terms no less favorable than those of the other purchasers in such offering), by giving, within ten (10) days after receiving such notice from the Corporation, written notice to the Corporation of such election. The time and place of the closing of such purchase shall be the closing date of the offering specified in the notice given by the Corporation or any extended closing date thereof. For purposes of this Section 7, each holder's pro rata portion of New Securities shall be equal to a fraction, the numerator of which is the sum of

(1) the number of shares of Common Stock then beneficially owned by such holder, which shares were issued to such holder upon conversion of shares of Series C Preferred held by such holder since the Original Issuance Date, and

(2) the number of shares of Common Stock into which such holder's shares of Series C Preferred could be converted if fully converted immediately prior to such issuance

and the denominator of which is the sum of

(3) the number of shares of Common Stock actually outstanding immediately prior to such issuance, and

(4) the number of shares of Common Stock issuable upon conversion of the then outstanding shares of Preferred.

Should any holder Series C Preferred not elect to purchase his/her or its pro rata portion of such New Securities in full, the remaining holders of Series C Preferred having elected to purchase their respective pro rata portions (the "Electing Holders") shall have the right to purchase such remaining, unpurchased portion in addition to their own, with each such holder having the right to purchase in the proportion that the number of shares owned by such holder (prior to receipt of the above described written notice by the Corporation) bears to the number of shares owned by all holders of Series C Preferred also electing to purchase such remaining New Securities; *provided, however*, the Electing Holders are entitled to only one such over-allotment right.

(d) Any offer by the Corporation of securities in addition to those specified in the notice described in Section 7(c), above, whether on the same or different terms as are specified therein, shall again require compliance by the Corporation with the terms of this Section 7.

(e) The rights granted in this Section 7 shall terminate immediately prior to an IPO.

8. Status of Converted Preferred Stock. In the event any shares of Preferred shall be converted pursuant to Section 3, the shares so converted shall be canceled and shall not thereafter be issuable by the Corporation.

9. Common Stock.

(a) Dividend Rights. Subject to the prior participatory rights of holders of all classes of stock at the time outstanding having prior and/or participatory rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Article IV(B) hereof.

(c) Voting Rights. Each holder of Common Stock shall be entitled to one (1) vote for each share of Common Stock held, shall be entitled to notice of any stockholder meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as is otherwise provided herein or as may be provided by law.

(d) Redemption. The Common Stock is not redeemable.

ARTICLE FIVE

The Corporation is to have perpetual existence.

ARTICLE SIX

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

ARTICLE SEVEN

Subject to Article 4(B)(5)(e) hereof, the number of directors which constitute the entire Board of Directors of the Corporation shall be as specified in the Bylaws of the Corporation. At each annual meeting of stockholders, directors of the Corporation shall be elected to hold office until the expiration for the term for which they are elected and until their successors have been duly elected and qualified; in each case in accordance with the rules and procedures set forth in the Bylaws of the Corporation and in this Amended and Restated Certificate of Incorporation, except that if any such election shall not be so held, such election shall take place at a stockholders' meeting called and held in accordance with the General Corporation Law of the State of Delaware. Elections of directors need not be by written ballot except and to the extent provided in the Bylaws of the Corporation.

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE EIGHT

To the fullest extent permitted by the Delaware General Corporation Law as the same exists or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exception from liability or limitation thereof is not permitted under the Delaware General Corporation Law as the same exists or may hereafter be amended.

The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person, such person's testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor of the Corporation.

Neither any amendment nor repeal of this Article, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE NINE

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute subject to

the rights conferred upon stockholders herein; provided, however, that without a stockholder's written consent no such amendment, alteration, change or repeal shall affect adversely such stockholder's rights hereunder in a discriminatory manner inconsistent with its adverse effects on rights of other stockholders hereunder (other than as reflected by the different number of shares held by such stockholders).

[Execution Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Certificate of Incorporation on behalf of the Corporation and has attested to such execution and does verify and affirm, under penalty of perjury, that this Amended and Restated Certificate of Incorporation is the act and deed of the Corporation and the facts stated herein are true as of this April 15, 2002.

ENOW, INC.

/s/ Steven Fadem
By: Steven Fadem, President

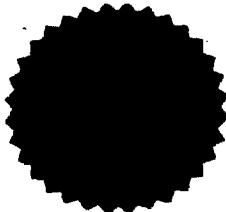
Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "ENOW, INC.", CHANGING ITS NAME FROM "ENOW, INC." TO "THE RELEGENGE CORPORATION", FILED IN THIS OFFICE ON THE TWENTY-THIRD DAY OF APRIL, A.D. 2002, AT 6 O'CLOCK P.M.

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



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

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AUTHENTICATION: 1739689

020259427

DATE: 04-24-02

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RECORDED: 03/18/2003

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