



## DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
SAMPLE TECHNOLOGIES, INC.

Pursuant to Section 242  
of the General Corporation Law of  
the State of Delaware

Sample Technologies, Inc. (hereinafter called the "Corporation"), organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify as follows:

By unanimous written consent of the Board of Directors of the Corporation a resolution was duly adopted, pursuant to Section 242 of the General Corporation Law of the State of Delaware, setting forth an amendment to the Certificate of Incorporation of the Corporation and declaring said amendment to be advisable. The stockholders of the Corporation duly approved said proposed amendment by written consent in accordance with Sections 228 and 242 of the General Corporation Law of the State of Delaware, and written notice of such consent has been given to all stockholders who have not consented in writing to said amendment. The resolution setting forth the amendment is as follows:

RESOLVED: That Article FOURTH of the Certificate of Incorporation of the Corporation be and hereby is deleted in its entirety and that the following Article FOURTH be and hereby is inserted in lieu thereof:

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 7,555,555 shares of Common Stock, \$.01 par value per share ("Common Stock"), and (ii) 1,953,888 shares of Preferred Stock, \$.01 par value per share ("Preferred Stock"), of which 1,065,000 shares are hereby designated as Series A Convertible Preferred Stock (the "Series A Preferred Stock") and 888,888 shares are hereby designated as Series B Convertible Preferred Stock (the "Series B Preferred Stock").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class or series of capital stock of the Corporation.

### A. COMMON STOCK.

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock.

2. Dividends. The holders of Common Stock shall have the right to receive dividends, ratably and equally with the holders of the Series A Preferred Stock as provided in Section B below, when and as declared by the Board of Directors of the Corporation out of assets legally available therefor, subject to any preferential rights of any then outstanding Preferred Stock (other than Series A Preferred Stock).

3. Liquidation.

(a) Upon a liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (each, a "Liquidation"), the assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of Series B Preferred Stock, Series A Preferred Stock and Common Stock as follows:

(i) First, each holder of Series B Preferred Stock shall be paid in full the Series B Preference Amount (as defined in Section C.1(a)) of all shares of Series B Preferred Stock held by such holder. If the net assets of the Corporation available for distribution among the holders of Series B Preferred Stock shall be insufficient to permit the payment in full of the Series B Preference Amount for all shares of Series B Preferred Stock, then the entire remaining net assets of the Corporation shall be distributed among the holders of Series B Preferred Stock ratably in proportion to the full preferential amounts to which they would otherwise be entitled to receive on account of their Series B Preferred Stock;

(ii) Second, each holder of Series A Preferred Stock shall be paid in full the Series A Preference Amount of all shares of Series A Preferred Stock

(ii) Second, each holder of Series A Preferred Stock shall be paid in full the Series A Preference Amount of all shares of Series A Preferred Stock held by such holder. If the net assets of the Corporation available for distribution among the holders of Series A Preferred Stock shall be insufficient to permit the payment in full of the Series A Preference Amount for all shares of Series A Preferred Stock, then the entire remaining net assets of the Corporation shall be distributed among the holders of Series A Preferred Stock ratably in proportion to the full preferential amounts to which they would otherwise be entitled to receive on account of their Series A Preferred Stock;

(iii) Third, each holder of Common Stock shall be paid in full an amount equal to the Series A Preference Amount (the "Common Preference Amount") for each share of Common Stock held by such holder. If the net assets of the Corporation available for distribution among the holders of Common Stock shall be insufficient to permit the payment in full of the Common Preference Amount for all shares of Common Stock, then the entire remaining net assets of the Corporation shall be distributed among the holders of Common Stock ratably in proportion to the full preferential amounts to which they would otherwise be entitled to receive on account of their Common Stock;

(iv) Fourth, each holder of Common Stock and Series A Preferred Stock shall be paid in full an amount equal to the Series B Preference Amount minus the Series A Preference Amount (the "Common A Preference Amount") for each share of Common Stock and each share of Series A Preferred Stock held by such holder. If the net assets of the Corporation available for distribution among the holders of Series A Preferred Stock and Common Stock shall be insufficient to permit the payment in full of the Common A Preference Amount for all shares of Common Stock and Series A Preferred Stock, then the entire remaining net assets of the Corporation shall be distributed among the holders of Series A Preferred Stock and Common Stock ratably in proportion to the shares of Common Stock and Common Stock issuable upon conversion of the Series A Preferred Stock of the Corporation then held by such holders of Common Stock and Series A Preferred Stock, as the case may be; and

(v) Fifth, the entire remaining net assets of the Corporation shall be distributed among the holders of Series B Preferred Stock, Series A Preferred Stock and Common Stock ratably in proportion to the shares of Common Stock and Common Stock issuable upon conversion of the Series B Preferred Stock and Series A Preferred Stock of the Corporation then held by such holders of Series B Preferred Stock, Series A Preferred Stock and Common Stock, as the case may be.

(b) A merger or consolidation of the Corporation (except one in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold more than 50% by voting power of the equity interests of the surviving entity), a single transaction or a series of transactions occurring over a period of less than one year pursuant to which holders of capital stock of the Corporation immediately prior to such transaction or series of transactions do not continue to hold more than 50% by voting power of the capital stock after such transaction or series of transactions, or the sale of all or substantially all the assets of the Corporation, shall be deemed to be a Liquidation of the Corporation, and all consideration payable to the stockholders of the Corporation (in the case of a merger or consolidation), or all consideration payable to the Corporation, together with all other available assets of the Corporation (in the case of an asset sale), shall be distributed to the holders of capital stock of the Corporation in accordance with Subsection 3(a) above.

(c) For purposes of this Section 3, the following definition shall apply:

(i) "Series A Preference Amount" shall mean for each outstanding share of Series A Preferred Stock \$1.00 plus a return thereon at a rate of 8.0% per annum, amortized on a daily basis and compounded semi-annually on each November 30 and May 31 (commencing November 30, 1999) from the date of issuance of such Series A Preferred Stock through the date of liquidation, dissolution or winding up of the Corporation, as the case may be, computed on the basis of a 360-day year of twelve 30-day months.

4. Voting. The holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting.

Subject to the voting rights of the holders of Preferred Stock, if any, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of Delaware.

## B. SERIES A CONVERTIBLE PREFERRED STOCK.

The rights, preferences, powers, privileges and restrictions, qualifications and limitations of the Series A Preferred Stock shall be as follows:

### 1. Dividends.

(a) The holders of each outstanding share of Series A Preferred Stock shall have the right to receive dividends or other distributions (as defined below), ratably and equally with the holders of Common Stock, when and as declared by the Board of Directors of the Corporation out of assets legally available therefor, subject to any preferential rights of any then outstanding Series B Preferred Stock; provided, however, that the holders of Series A Preferred Stock shall be entitled to receive dividends or other distributions on each outstanding share of Series A Preferred Stock in an amount at least equal to the product of (i) the per share amount, if any, of the dividend or other distribution to be declared, paid or set aside for the Common Stock, multiplied by (ii) the number of whole shares of Common Stock into which such share of Series A Preferred Stock is then convertible.

(b) Any dividend or distribution on or with respect to the Common Stock payable in shares of capital stock of the Corporation, or options, warrants or rights to acquire shares of capital stock of the Corporation, or securities convertible into or exchangeable for shares of capital stock of the Corporation, shall be payable in shares of, or options, warrants or rights to acquire or securities convertible into or exchangeable for, capital stock of the Corporation of the same class upon or with respect to which such dividend or distribution is being paid.

Corporation, shall be payable in shares of, or options, warrants or rights to acquire or securities convertible into or exchangeable for, capital stock of the Corporation of the same class upon or with respect to which such dividend or distribution is being paid.

(c) For purposes of this Section 1, unless the context requires otherwise, "distribution" shall mean the transfer of cash or property without consideration, whether by way of dividend or otherwise, payable other than in Common Stock or other securities of the Corporation, or the purchase or redemption of shares of the Corporation (other than repurchases of Common Stock held by employees or directors of, or consultants to, the Corporation upon termination of their employment or services issue and other than redemptions in liquidation or dissolution of the Corporation) for cash or property, including any such transfer, purchase or redemption by a subsidiary of this Corporation.

2. Liquidation, Dissolution or Winding Up. Upon a Liquidation, the holders of Series A Preferred Stock shall have the rights and preferences set forth in Section A.3.

3. Voting.

(a) Each holder of outstanding shares of Series A Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock held by such holder are then convertible (as adjusted from time to time pursuant to Section 4 hereof), at each meeting of stockholders of the Corporation (and written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law, by the provisions of Subsection 3(b) below or elsewhere in the Corporation's Certificate of Incorporation, as amended, or by the provisions establishing any other series of Preferred Stock, holders of Series A Preferred Stock shall vote together with the holders of Common Stock and Preferred Stock as a single class.

(b) Except as provided by law, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least 51% of the then outstanding shares of Series A Preferred Stock voting together as a single class of Preferred Stock:

(i) Amend, repeal, alter or waive any provision of, or add any provision to, the Corporation's Certificate of Incorporation or Bylaws, if such action would adversely affect the rights, preferences or privileges of the Series A Preferred Stock;

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

(iii) Merge or consolidate into or with any other corporation or other entity or effect a reorganization or a reclassification or recapitalization of the outstanding capital stock of the Corporation (except one in which the holders of capital stock of the Corporation prior to such merger, consolidation, reorganization, reclassification or recapitalization continue to hold more than 50% by voting power of the capital stock of the surviving Corporation) or sell all or substantially all of the Corporation's assets;

(iv) Redeem, purchase or otherwise acquire, directly or indirectly, any of the Corporation's equity securities other than securities issued pursuant to options granted pursuant to an incentive stock option plan of the Corporation or securities held by an employee of the Corporation upon the termination of the employment of such employee;

(v) Fix the size of the Corporation's board of directors at any number other than five;

(vi) Authorize or effect the declaration or payment of dividends or other distributions upon any equity securities of the Corporation; or

(vii) Authorize or issue any capital stock or other obligations (including debt obligations) convertible into or exchangeable for, or having rights to purchase, any shares of capital stock of the Corporation (in each case other than up to 5,601,667 shares of capital stock pursuant to employee and director plans or as founders shares) at a price per share less than the Series A Conversion Price (as defined in subsection 4(a)), without the prior approval of at least 80% of the members of the Board of Directors of the Corporation.

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

(a) Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.00 by the Series A Conversion Price in effect at the time of conversion. The "Series A Conversion Price" shall initially be \$1.00. The rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

In the event of a Liquidation of the Corporation, the Conversion Rights shall terminate at the close of business on the first full day preceding the date fixed for the payment of any amounts distributable on Liquidation to the holders of Series A Preferred Stock.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Series A Conversion Price.

(c) Mechanics of Conversion.

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(i) In order for a holder of Series A Preferred Stock to convert such shares into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock at the office of the transfer agent for the Series A Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Series A Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date"). The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of Series A Preferred Stock, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(ii) The Corporation shall at all times when the Series A Preferred Stock 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 Stock. Before taking any action which would cause an adjustment reducing the Series A Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, 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 Series A Conversion Price.

(iii) Upon any such conversion, no adjustment to the Series A Conversion Price shall be made for any declared but unpaid dividends on the Series A Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

(iv) All shares of Series A Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange there for and payment of any dividends declared or accrued but unpaid thereon. Any shares of Series A Preferred Stock so converted shall be retired and cancelled and shall not be reissued, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized Series A Preferred Stock accordingly.

(v) The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(vi) Notwithstanding any other provision hereof, if a conversion of Series A Preferred Stock is to be made in connection with a public offering of Common Stock, the conversion of any shares of Series A Preferred Stock may, at the election of the holder of such shares, be conditioned upon the consummation of such public offering in which case such conversion shall not be deemed to be effective until the consummation of such public offering.

(d) Special Definitions. For purposes of Subsections 4(e)-4(g), the following definitions shall apply:

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

(B) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation after the Original Issue Date, or any options or other securities convertible into or exchangeable for shares of Common Stock, other than up to 5,601,667 shares of capital stock issued or issuable pursuant to employee and director plans or as founders shares.

(e) 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 Series A Conversion Price then in effect immediately before that subdivision shall each be proportionately decreased. If the Corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of the Series A Preferred Stock, the Series A Conversion Price then in effect immediately before that subdivision shall be proportionately increased. 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 Series A Conversion Price then in effect immediately before the combination shall each be proportionately increased. If the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Series A Preferred Stock, the Series A Conversion Price then in effect immediately before the combination shall be proportionately decreased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) 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, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in Additional Shares of Common Stock, then and in each such event the Series A Conversion Price then in effect shall each be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying

of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price then in effect by a fraction:

(1) 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 or the close of business on such record date, and

(2) 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 or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made if the holders of Series A Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event.

(g) 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, or fix a record date for the determination of holders of Common Stock entitled to receive, 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 the Series A Preferred Stock 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 the Series A Preferred Stock been converted into Common Stock on the date of such event and had they 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, giving application to all adjustments called for during such period under this paragraph with respect to the rights of the holders of the Series A Preferred Stock; and provided further, however, that no such adjustment shall be made if the holders of Series A Preferred Stock simultaneously receive a dividend or other distribution of such securities in an amount equal to the amount of such securities as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event.

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

(i) Adjustment for Merger or Reorganization, etc. In case of any consolidation or merger of the Corporation with or into another corporation or the sale of all or substantially all of the assets of the Corporation to another corporation (other than a consolidation, merger or sale which is covered by Subsection A.3(b)), each share of Series A Preferred Stock shall thereafter be convertible (or shall be converted into a security which shall 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 Stock would have been entitled upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interest thereafter of the holders of the Series A Preferred Stock to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Series A 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 Stock.

(j) 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 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 Stock.

(k) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A 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 Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Series A 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 Stock.

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

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

- (i) that the Corporation declares a dividend (or any other distribution) on its Common Stock payable in Common Stock or other securities of the Corporation;
- (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 or merger 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 or at the office of the transfer agent of the Series A Preferred Stock and shall cause to be mailed to the holders of the Series A Preferred Stock at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten days prior to the date specified in (A) below or twenty 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 of 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, 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. Mandatory Conversion.

(a) Upon the closing of the Corporation's initial public offering of shares of Common Stock pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$25,000,000 of net proceeds to the Corporation (the "Mandatory Conversion Date"), (i) all outstanding shares of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the then effective conversion rate and (ii) the number of authorized shares of Preferred Stock shall be automatically reduced by the number of shares of Preferred Stock that had been designated as Series A Preferred Stock and all provisions included under the caption "Series A Convertible Preferred Stock", and all references to the Series A Preferred Stock shall be deleted and of no further force or effect.

(b) All holders of record of shares of Series A Preferred Stock will be given written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all shares of Series A Preferred Stock pursuant to this Section 5. Such notice shall be sent by first class or registered mail, postage prepaid, to each record holder of Series A Preferred Stock at such holder's address last shown on the records of the transfer agent for the Series A Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent). Upon receipt of such notice, each holder of shares of Series A Preferred Stock shall surrender his or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 5. On the Mandatory Conversion Date, all rights with respect to the Series A Preferred Stock so converted, including the rights, if any, to receive notices and vote, will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Series A Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Series A Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Subsection 4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(c) All certificates evidencing shares of Series A Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and canceled and the shares of Series A Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. The Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized Series A Preferred Stock accordingly.

(d) Any Series A Preferred Stock converted pursuant to this Section 5 will be canceled and will not under any circumstances be reissued, sold or transferred and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series A Preferred Stock accordingly.

#### C. SERIES B CONVERTIBLE PREFERRED STOCK.

The rights, preferences, powers, privileges and restrictions, qualifications and limitations of the Series B Preferred Stock shall be as follows:

##### 1. Dividends.

(a) The holders of each outstanding share of Series B Preferred Stock shall have the right to receive, in preference to the holders of Series B Junior Stock (as defined in subsection 1(d) below), when and as declared by the Board of Directors of the Corporation out of assets legally available therefor, dividends as provided in this Section 1(a). Dividends shall accrue on each outstanding share of Series B Preferred Stock at an annual rate of six percent (6%) per annum on the sum of (i) \$2.25 (the "Series B Purchase Price") and (ii) all accumulated and unpaid dividends accrued thereon

six percent (6%) per annum on the sum of (i) \$2.25 (the "Series B Purchase Price") and (ii) all accumulated and unpaid dividends accrued thereon pursuant to this Section 1(a) from the date of issuance thereof (the "Series B Dividends" and, the sum of the Series B Purchase Price and Series B Dividends is referred to herein as the "Series B Preference Amount"). Such dividends will be calculated and compounded semi-annually in arrears on November 30 and May 31 of each year in respect of the prior six month period prorated on a daily basis for partial periods. Such dividends shall commence to accrue on each share of Series B Preferred Stock from the date of issuance of such share of Series B Preferred Stock whether or not they have been declared and whether or not there are profits, surplus or other funds legally available for the payment of dividends and shall continue to accrue until paid in cash out of assets legally available therefor or, in the case of a mandatory conversion pursuant to Section 5, in shares of Common Stock as provided in Section 5. In addition, the holders of each outstanding share of Series B Preferred Stock shall have the right to receive dividends or other distributions (as defined below), ratably and equally with the holders of Common Stock, when and as declared by the Board of Directors of the Corporation out of assets legally available therefor; provided, however, that the holders of Series B Preferred Stock shall be entitled to receive dividends or other distributions on each outstanding share of Series B Preferred Stock in an amount at least equal to the product of (i) the per share amount, if any, of the dividend or other distribution to be declared, paid or set aside for the Common Stock, multiplied by (ii) the number of whole shares of Common Stock into which such share of Series B Preferred Stock is then convertible.

(b) Any dividend or distribution on or with respect to the Common Stock payable in shares of capital stock of the Corporation, or options, warrants or rights to acquire shares of capital stock of the Corporation, or securities convertible into or exchangeable for shares of capital stock of the Corporation, shall be payable in shares of, or options, warrants or rights to acquire or securities convertible into or exchangeable for, capital stock of the Corporation of the same class upon or with respect to which such dividend or distribution is being paid.

(c) For purposes of this Section 1, unless the context requires otherwise, "distribution" shall mean the transfer of cash or property without consideration, whether by way of dividend or otherwise, payable other than in Common Stock or other securities of the Corporation, or the purchase or redemption of shares of the Corporation (other than repurchases of Common Stock held by employees or directors of, or consultants to, the Corporation upon termination of their employment or services issue and other than redemptions in liquidation or dissolution of the Corporation) for cash or property, including any such transfer, purchase or redemption by a subsidiary of this Corporation.

(d) For purposes of this Section 1, "Series B Junior Stock" shall mean any of the Corporation's Common Stock, Series A Preferred Stock and all other equity securities of the Corporation other than the Series B Preferred Stock and any other shares of the Corporation's preferred stock which by their terms, state that they are not Series B Junior Stock or provide the holders thereof with rights pari passu with or senior to those of the holders of Series B Preferred Stock.

2. Liquidation, Dissolution or Winding Up. Upon a Liquidation, the holders of Series B Preferred Stock shall have the rights and preferences set forth in Section A.3.

### 3. Voting.

(a) Each holder of outstanding shares of Series B Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Series B Preferred Stock held by such holder are then convertible (as adjusted from time to time pursuant to Section 4 hereof), at each meeting of stockholders of the Corporation (and written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law, by the provisions of Subsection 3(b) below or elsewhere in the Corporation's Certificate of Incorporation, as amended, or by the provisions establishing any other series of Preferred Stock, holders of Series B Preferred Stock shall vote together with the holders of Common Stock and Preferred Stock as a single class.

(b) Except as provided by law, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least 51% of the then outstanding shares of Series B Preferred Stock each voting together as a single class of Preferred Stock:

(i) Amend, repeal, alter or waive any provision of, or add any provision to, the Corporation's Certificate of Incorporation or Bylaws, if such action would adversely affect the rights, preferences or privileges of the Series B Preferred Stock;

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

(iii) Merge or consolidate into or with any other corporation or other entity or effect a reorganization or a reclassification or recapitalization of the outstanding capital stock of the Corporation (except one in which the holders of capital stock of the Corporation prior to such merger, consolidation, reorganization, reclassification or recapitalization continue to hold more than 50% by voting power of the capital stock of the surviving Corporation) or sell, convey, lease or otherwise dispose of all or substantially all of the Corporation's assets;

(iv) Redeem, purchase or otherwise acquire, directly or indirectly, any of the Corporation's equity securities other than securities issued pursuant to options granted pursuant to an incentive stock option plan of the Corporation or securities held by an employee of the Corporation upon the termination of the employment of such employee;

(v) Fix the size of the Corporation's board of directors at any number other than five;

(vi) Authorize or effect the declaration or payment of dividends or other distributions upon any equity securities of the Corporation;

- (vi) Authorize or effect the declaration or payment of dividends or other distributions upon any equity securities of the Corporation;
- (vii) Authorize or issue any capital stock or other obligations (including debt obligations) convertible into or exchangeable for, or having rights to purchase, any shares of capital stock of the Corporation (in each case other than up to 5,601,667 shares of capital stock pursuant to employee and director plans or as founders shares) at a price per share less than the Series B Conversion Price (as defined in subsection 4(a)), as applicable, without the prior approval of at least 80% of the members of the Board of Directors of the Corporation; or
- (viii) Effect any liquidation, dissolution or winding up of the Corporation, including but not limited to a Liquidation.

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

(a) Right to Convert. Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$2.25 by the Series B Conversion Price in effect at the time of conversion. The "Series B Conversion Price" shall initially be \$2.25. The rate at which shares of Series B Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

In the event of a Liquidation of the Corporation, the Conversion Rights shall terminate at the close of business on the first full day preceding the date fixed for the payment of any amounts distributable on Liquidation to the holders of Series B Preferred Stock.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series B Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Series B Conversion Price.

(c) Mechanics of Conversion.

(i) In order for a holder of Series B Preferred Stock to convert such shares into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series B Preferred Stock at the office of the transfer agent for the Series B Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Series B Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date"). The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of Series B Preferred Stock, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(ii) The Corporation shall at all times when the Series B Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Series B 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 B Preferred Stock. Before taking any action which would cause an adjustment reducing the Series B Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series B Preferred Stock, 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 Series B Conversion Price.

(iii) Upon any such conversion, no adjustment to the Series B Conversion Price shall be made for any declared but unpaid dividends on the Series B Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

(iv) All shares of Series B Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any dividends declared or accrued but unpaid thereon. Any shares of Series B Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized Series B Preferred Stock accordingly.

(v) The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series B Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series B Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(vi) Notwithstanding any other provision hereof, if a conversion of Series B Preferred Stock is to be made in connection with a public offering of Common Stock, the conversion of any shares of Series B Preferred Stock may, at the election of the holder of such shares, be conditioned upon the consummation of such public offering in which case such conversion shall not be deemed to be effective until the consummation of such public offering.



consummation of such public offering in which case such conversion shall not be deemed to be effective until the consummation of such public offering.

(d) Adjustments to Conversion Price for Diluting Issues:

(i) Special Definitions. For purposes of Subsections 4(d)-4(g), the following definitions shall apply:

(A) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities, excluding options described in subsection 4(d)(i)(D)(IV) below.

(B) "Original Issue Date" shall mean the date on which a share of Series B Preferred Stock was 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 Subsection 4(d)(iii) below, deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(I) upon conversion of any Convertible Securities outstanding on the Original Issue Date, or upon exercise of any Options outstanding on the Original Issue Date;

(II) as a dividend or distribution on Preferred Stock;

(III) by reason of a dividend, stock split, split up or other distribution on shares of Common Stock that is covered by Subsection 4(e) or 4(f) below; or

(IV) to employees or directors of, or consultants to, the Corporation pursuant to a plan adopted by the Board of Directors of the Corporation or as founders shares not to exceed 5,601,667 shares of Common Stock.

(ii) No Adjustment of Conversion Price. No adjustment in the number of shares of Common Stock into which the Series B Preferred Stock is convertible shall be made, by adjustment in the Series B Conversion Price, as applicable, unless the consideration per share (determined pursuant to Subsection 4(d)(v)) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Series B Conversion Price in effect on the date of, and immediately prior to, the issue of such Additional Shares.

(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 shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares 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 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 Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Subsection 4(d)(v) hereof) of such Additional Shares of Common Stock would be less than the Series B Conversion Price, as applicable, 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 Series B 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 in the consideration payable to the Corporation, upon the exercise, conversion or exchange thereof, the Series B 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 becoming effective, be recomputed to reflect such increase insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) Upon the expiration or termination of any unexercised Option or any unexercised rights of conversion or exchange under any Convertible Security, the Series B Conversion Price shall be readjusted to eliminate the Additional Shares of Common Stock deemed issued as the result of the original issue of such Option or such Convertible Security;

(D) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any Option or Convertible Security, including, but not limited to, a change resulting from the anti-dilution provisions thereof, the Series B Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustment which was made upon the issuance of such Option or Convertible Security not exercised or converted prior to such change been made upon the basis of such change; and

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

In the event the Corporation, after the Original Issue Date, amends the terms of any Options or Convertible Securities (whether such Options or

In the event the Corporation, after the Original Issue Date, amends the terms of any Options or Convertible Securities (whether such Options or Convertible Securities were outstanding on the Original Issue Date or were issued after the Original Issue Date), then such Options or Convertible Securities, as so amended, shall be deemed to have been issued after the Original Issue Date and the provisions of this Subsection 4(d) (iii) shall apply.

(iv) Adjustment of Series B Conversion Price Upon Issuance of Additional Shares of Common Stock.

In the event the Corporation shall at any time after the Original Issue Date issue Additional Shares of Common Stock without consideration or for a consideration per share less than the applicable Series B Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, such Series B Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Series B Conversion Price by a fraction, (A) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue plus (2) the number of shares of Common Stock which the aggregate consideration received or to be received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Series B Conversion Price; and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; provided that, (i) for the purpose of this Subsection 4(d)(iv), all shares of Common Stock issuable upon exercise or conversion of Options or Convertible Securities outstanding immediately prior to such issue shall be deemed to be outstanding, and (ii) the number of shares of Common Stock deemed issuable upon exercise or conversion of such outstanding Options and Convertible Securities shall not give effect to any adjustments to the conversion price or conversion rate of such Options or Convertible Securities resulting from the issuance of Additional Shares of Common Stock that is the subject of this calculation.

Notwithstanding the provisions of this subsection 4(d)(iv), in the event the Corporation makes a Dilutive Issuance (as defined below), the adjustment to the Series B Conversion Price provided for in this Subsection 4(d)(iv) as a result of such Dilutive Issuance shall not be made with respect to shares of Series B Preferred Stock held by a person or entity who was given the opportunity by written notice from the Company to purchase its Pro Rata Portion (as defined below) of such Dilutive Issuance (whether pursuant to a right of first refusal or otherwise), and who failed to purchase his or its Pro Rata Portion of such Dilutive Issuance. Each such holder shall be deemed to have waived (i) the reduction in the Series B Conversion Price of such holder's shares of Series B Preferred Stock that would have otherwise resulted pursuant to this Subsection 4(d)(iv) from such Dilutive Issuance, (ii) the right to receive, upon conversion of its Series B Preferred Stock or pursuant to this Section 4, any additional shares of Common Stock that would have been issuable as a result of such reduction in the Series B Conversion Price, as the case may be (and such waiver shall be binding upon any transferee of the shares of Series B Preferred Stock and held by such holder) and (iii) the right to a reduction in the Series B Conversion Price of such holder's shares of Series B Preferred Stock pursuant to this Section 4(d)(iv) upon any subsequent Dilutive Issuance. A "Dilutive Issuance" shall mean any issuance of Additional Shares of Common Stock that results (or would result, except for this paragraph) in a reduction in the Series B Conversion Price pursuant to this Subsection 4(d)(iv). A holder's "Pro Rata Portion" of a Dilutive Issuance shall mean the number of Additional Shares of Common Stock issued in such Dilutive Issuance, multiplied by a fraction, the numerator of which is the number of shares of Common Stock issuable upon conversion of all shares of Series B Preferred Stock of the Corporation then held by such holder, and the denominator of which is the aggregate number of shares of Common Stock then outstanding and Common Stock issuable upon conversion of all shares of Convertible Securities of the Corporation then outstanding. For purposes of this paragraph, the portion of a Dilutive Issuance purchased by a holder of Series B Preferred Stock shall be deemed to include any portion of such Dilutive Issuance purchased by an "affiliate" (as defined in Rule 144 under the Securities Act of 1933, as amended) of such holder.

(v) Determination of Consideration. For purposes of this Subsection 4(d), 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:

(I) 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;

(II) 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; and

(III) 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 (I) and (II) above, as determined in good faith by the Board of Directors.

(B) 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 Subsection 4(d)(iii), 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 Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(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.

(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.

(vi) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock which are comprised of shares of the same series or class of Preferred Stock, and such issuance dates occur within a period of no more than 30 days, then the Series B Conversion Price shall each be adjusted only once on account of such issuances, with such adjustment to occur upon the final such issuance and to give effect to all such issuances as if they occurred on the date of the final such issuance.

(e) 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 Series B Conversion Price then in effect immediately before that subdivision shall each be proportionately decreased. If the Corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of the Series B Preferred Stock, the Series B Conversion Price then in effect immediately before that subdivision shall be proportionately increased. 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 Series B Conversion Price then in effect immediately before the combination shall each be proportionately increased. If the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Series B Preferred Stock, the Series B Conversion Price then in effect immediately before the combination shall be proportionately decreased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) 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, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in Additional Shares of Common Stock, then and in each such event the Series B Conversion Price then in effect shall each be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series B Conversion Price then in effect by a fraction:

(1) 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 or the close of business on such record date, and

(2) 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 or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series B Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series B Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made if the holders of Series B Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series B Preferred Stock had been converted into Common Stock on the date of such event.

(g) 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, or fix a record date for the determination of holders of Common Stock entitled to receive, 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 the Series B Preferred Stock 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 the Series B Preferred Stock been converted into Common Stock on the date of such event and had they 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, giving application to all adjustments called for during such period under this paragraph with respect to the rights of the holders of the Series B Preferred Stock; and provided further, however, that no such adjustment shall be made if the holders of Series B Preferred Stock simultaneously receive a dividend or other distribution of such securities in an amount equal to the amount of such securities as they would have received if all outstanding shares of Series B Preferred Stock had been converted into Common Stock on the date of such event.

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

(i) Adjustment for Merger or Reorganization, etc. In case of any consolidation or merger of the Corporation with or into another corporation or the sale of all or substantially all of the assets of the Corporation to another corporation (other than a consolidation, merger or sale which is covered by Subsection A.3(b)), each share of Series B Preferred Stock shall thereafter be convertible (or shall be converted into a security which shall 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 B Preferred Stock would have been entitled upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interest thereafter of the holders of the Series B Preferred Stock to the end that the provisions set

this Section 4 set forth with respect to the rights and interest thereafter of the holders of the Series B Preferred Stock to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Series B 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 B Preferred Stock.

(j) 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 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 B Preferred Stock.

(k) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series B 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 B Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series B Preferred Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Series B 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 B Preferred Stock.

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

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

(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 or merger 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 or at the office of the transfer agent of the Series B Preferred Stock and shall cause to be mailed to the holders of the Series B Preferred Stock at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten days prior to the date specified in (A) below or twenty 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 of 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, 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. Mandatory Conversion.

(a) Upon the closing of the Corporation's initial public offering of shares of Common Stock pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$25,000,000 of net proceeds to the Corporation (the "Mandatory Conversion Date"), (i) all outstanding shares of Series B Preferred Stock shall automatically be converted into shares of Common Stock at the then effective conversion rate, (ii) any accrued and unpaid dividends, shall be paid in cash to the holders of record of outstanding shares of Series B Preferred Stock, provided that the dividends may be paid, at the Corporation's election, in Common Stock valued at the initial public offering price to the public and in cash in lieu of a fraction of a share and (iii) the number of authorized shares of Preferred Stock shall be automatically reduced by the number of shares of Preferred Stock that had been designated as Series B Preferred Stock and all provisions included under the caption "Series B Convertible Preferred Stock", and all references to the Series B Preferred Stock shall be deleted and of no further force or effect.

(b) All holders of record of shares of Series B Preferred Stock will be given written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all shares of Series B Preferred Stock pursuant to this Section 5. Such notice shall be sent by first class or registered mail, postage prepaid, to each record holder of Series B Preferred Stock at such holder's address last shown on the records of the transfer agent for the Series B Preferred Stock, as the case may be (or the records of the Corporation, if it serves as its own transfer agent). Upon receipt of such notice, each holder of shares of Series B Preferred Stock shall surrender his or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 5. On the Mandatory Conversion Date, all rights with respect to the Series B Preferred Stock so converted, including the rights, if any, to receive notices and vote, will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Series B Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Series B Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his or its written

certificate or certificates for Series B Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Subsection 4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(c) All certificates evidencing shares of Series B Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and canceled and the shares of Series B Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. The Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized Series B Preferred Stock accordingly.

(d) Any Series B Preferred Stock converted pursuant to this Section 5 will be cancelled and will not under any circumstances be reissued, sold or transferred and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series B Preferred Stock accordingly.

## 6. Redemption

(a) The Series B Preferred Stock may be redeemed (in whole or in part) at the option of the holders thereof on or after the seventh anniversary of the earliest date on which a share of Series B Preferred Stock was first issued (the "Redemption Trigger Date"), in the manner specified herein; provided that each holder of Series B Preferred Stock shall have only one option of redemption pursuant to this Section 6(a). To exercise his or its rights of redemption, the holder of a share or shares of Series B Preferred Stock shall notify the Corporation in writing of its intent to exercise the rights afforded by this Section 6(a) on, or within 60 days after, the Redemption Trigger Date and such notice shall specify a date not less than one hundred and eighty (180) nor more than two hundred and ten (210) days from the date of such notice (the "Initial Redemption Date") on which the Corporation shall commence redeeming the Series B Preferred Stock in the manner specified herein. Upon receipt of such notice, the Corporation shall promptly notify the remaining holders of Series B Preferred Stock of the Initial Redemption Date. The remaining holders have the right to participate in such redemption if they so elect by giving the Corporation written notice to such effect within fifteen (15) days of having received such notice. The Corporation shall redeem the shares of Series B Preferred Stock (in the manner specified below) by paying in cash by wire transfer of immediately available funds an amount equal to the Series B Preference Amount of such shares (the "Redemption Price"). The Corporation shall redeem the shares of Series B Preferred Stock as follows: (i) on the Initial Redemption Date, the Corporation shall be required to redeem in aggregate one-third (1/3) of the aggregate number of shares of Series B Preferred Stock being redeemed; (ii) on the first anniversary of the Initial Redemption Date (the "Second Redemption Date"), the Corporation shall be required to redeem in aggregate, taking into effect the prior redemption, one-half (1/2) of the aggregate remaining number of shares of Series B Preferred Stock being redeemed; and (iii) on the second anniversary of the Initial Redemption Date (the "Third Redemption Date"; and the Initial Redemption Date, the Second Redemption Date and the Third Redemption Date are sometimes referred to herein as a "Redemption Date"), the Corporation shall be required to redeem in aggregate, taking into effect all prior redemptions, the aggregate remaining number of shares of Series B Preferred Stock being redeemed. Notwithstanding the foregoing, at the Corporation's option, at any time on or after the Initial Redemption Date, the Corporation may redeem any or all of the remaining shares of Series B Preferred Stock being redeemed; provided that, the Corporation shall notify the holders of the remaining shares of Series B Preferred Stock being redeemed in writing and such notice shall specify a date not less than 30 days from the date of such notice (the "Acceleration Redemption Date") on which the remaining shares of Series B Preferred Stock shall be redeemed. On the Acceleration Redemption Date, the Corporation shall redeem the shares of Series B Preferred Stock being redeemed by paying in cash by wire transfer of immediately available funds an amount equal to the Redemption Price of such shares.

(b) If the funds of the Corporation legally available for redemption of shares of Series B Preferred Stock on the Initial Redemption Date or on the Second Redemption Date are insufficient to redeem the total number of outstanding shares of Series B Preferred Stock entitled to redemption on that date, then: (i) the holders of shares of Series B Preferred Stock entitled to redemption shall share ratably in any funds legally available for redemption of such shares being tendered on that date according to the respective amounts that would be payable with respect to the full number of shares being tendered on that date if all such tendered shares were redeemed; and (ii) on the next succeeding Redemption Date, the Corporation shall be required to redeem all the previously tendered but unredeemed shares of Series B Preferred Stock plus all new shares of Series B Preferred Stock tendered for redemption on that date. If the funds of the Corporation legally available for redemption of shares of Series B Preferred Stock on the Third Redemption Date are insufficient to redeem the total number of shares of Series B Preferred Stock required to be redeemed on that date, then: (i) the holders of shares of Series B Preferred Stock entitled to redemption shall share ratably in any funds legally available for redemption of such shares being tendered according to the respective amounts that would be payable with respect to the full number of shares being tendered on that date if all such tendered shares were being redeemed; and (ii) when additional funds of the Corporation are legally available for the redemption of any remaining unredeemed shares of Series B Preferred Stock, such funds will be used at the earliest permissible time, to redeem the balance of such shares, or such portion thereof for which funds are then legally available. The Corporation shall be obligated to use its best efforts to take such actions as may be necessary (including, without limitation, the issuance of additional equity securities, the revaluation or recapitalization of the Corporation or the consummation of a merger or sale of assets) in order to redeem any shares of Series B Preferred Stock that are entitled to redemption but which have not been redeemed as of the Third Redemption Date.

(c) If, for any reason, the Corporation fails to redeem all shares of Series B Preferred Stock entitled to redemption on a Redemption Date, the unredeemed shares shall remain outstanding and shall continue to have all rights and preferences (including, without limitation, dividend and voting rights) provided for herein and the holders of such unredeemed shares shall have the ongoing right to be redeemed as provided above in Sections 6(a) and (b), together with such rights and remedies as may be available under applicable law.

(d) The notices provided for in this Section 6 shall be sent, if by or on behalf of the Corporation, to the holders of the Series B Preferred Stock at their respective addresses as shall then appear on the records of the Corporation, or if by any holder of Series B Preferred Stock, to the Corporation at its principal executive office by first class mail postage prepaid or by a nationally recognized overnight courier service (i) notifying such

at its principal executive office, by first class mail, postage prepaid, or by a nationally recognized overnight courier service, (i) notifying such recipient of the redemption, the Initial Redemption Date and the number of shares of Series B Preferred Stock to be redeemed, and (ii) in the case of any notice by or on behalf of the Corporation, stating (in addition to the items specified in (i) above) the place or places at which the shares called for redemption shall, upon presentation and surrender of such certificates representing such shares, be redeemed, the Acceleration Redemption Date, if applicable, and the Redemption Price therefor.

(e) Any shares of Series B Preferred Stock redeemed pursuant to this Section 6 or otherwise acquired by the Corporation in any manner whatsoever shall be canceled and shall not under any circumstances be reissued; and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce accordingly the number of authorized shares of Series B Preferred Stock.

(f) Notwithstanding anything to the contrary contained in this Section 6, Series B Preferred Stock shall not be redeemable at the option of the holder thereof and the holders of Series B Preferred Stock shall have no right of redemption pursuant to this Section 6 if holders of at least 67% of the then outstanding shares of Preferred Stock, so agree in writing.

IN WITNESS WHEREOF, the Corporation has caused its corporate seal to be affixed hereto and this Certificate of Amendment to be signed by its Chairman and attested by its Secretary this \_\_th day of June, 1999.

SAMPLE TECHNOLOGIES, INC.

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

ATTEST:

\_\_\_\_\_  
Secretary

[Corporate Seal]

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