

# Delaware

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The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "TELETECH HOLDINGS, INC.", CHANGING ITS NAME FROM "TELETECH HOLDINGS, INC." TO "TTEC HOLDINGS, INC.", FILED IN THIS OFFICE ON THE EIGHTEENTH DAY OF DECEMBER, A.D. 2017, AT 11:39 O`CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AMENDMENT IS THE FIRST DAY OF JANUARY, A.D. 2018.

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



  
Jeffrey W. Bullock, Secretary of State

2464275 8100  
SR# 20177624847

Authentication: 203783573  
Date: 12-18-17

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

**STATE OF DELAWARE  
CERTIFICATE OF AMENDMENT  
OF CERTIFICATE OF INCORPORATION**

The corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware does hereby certify:

**FIRST:** That at a meeting of the Board of Directors of  
TeleTech Holdings, Inc.

resolutions were duly adopted setting forth a proposed amendment of the Certificate of Incorporation of said corporation, declaring said amendment to be advisable and calling a meeting of the stockholders of said corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

**RESOLVED**, that the Certificate of Incorporation of this corporation be amended by changing the Article thereof numbered "1" so that, as amended, said Article shall be and read as follows:

The name of the corporation is TTEC Holdings, Inc.

**SECOND:** That thereafter, pursuant to resolution of its Board of Directors, a special meeting of the stockholders of said corporation was duly called and held upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.

**THIRD:** That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

**FOURTH:** The effective date of this amendment is 1/1/2018

**IN WITNESS WHEREOF**, said corporation has caused this certificate to be signed this 11<sup>th</sup> day of December, 2017.

By: Margaret S. McLean  
Authorized Officer

Title: Secretary

Name: Margaret McLean  
Print or Type

**RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
TELETECH HOLDINGS, INC.**

TELETECH HOLDINGS, INC., a Delaware corporation, for the purposes hereinafter stated, under and pursuant to the provisions of the General Corporation Law of the State of Delaware, as amended, does hereby certify as follows:

1. The name of the corporation (the "Corporation") is TeleTech Holdings, Inc.
2. The original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on December 22, 1994.
3. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, as amended, this Restated Certificate of Incorporation restates and integrates and further amends the provisions of the original Certificate of Incorporation of the Corporation.
4. This Restated Certificate of Incorporation was duly adopted by written consents of the stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, as amended, and written notice of the adoption of this Restated Certificate of Incorporation has been given as provided by Section 228 of the General Corporation Law of the State of Delaware, as amended, to every stockholder entitled to such notice.
5. The text of the Certificate of Incorporation of the Corporation is hereby restated and further amended to read in its entirety as follows:

**ARTICLE ONE**  
*Name of Corporation*

The name of the Corporation is TeleTech Holdings, Inc.

**ARTICLE TWO**  
*Address of Registered Agent*

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

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 11:45 AM 08/01/1996  
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### ARTICLE THREE

#### *Purpose*

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as amended. The Corporation shall have perpetual existence.

### ARTICLE FOUR

#### *Stock*

A. Authorized Stock. The total number of shares of stock which the Corporation shall have authority to issue is 160,000,000, of which 150,000,000 shares with \$0.01 per share par value are designated as Common Stock and 10,000,000 shares of \$0.01 per share par value are designated as Preferred Stock.

B. Right to Designate Preferred Stock. The board of directors of the Corporation is authorized, subject to limitations prescribed by law, to provide by resolution or resolutions for the issuance of the shares of Preferred Stock as a class or in series and, by filing a certificate of designations, pursuant to the General Corporation Law of the State of Delaware, as amended, setting forth a copy of such resolution or resolutions to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences, and rights of the shares of the class or of each such series and the qualifications, limitations, and restrictions thereof. The authority of the board of directors with respect to the class or each series shall include, but not be limited to, determination of the following:

1. the number of shares constituting any series and the distinctive designation of that series;
2. the dividend rate on the shares of the class or of any series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of the class or of that series;
3. whether the class or any series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;
4. whether the class or any series shall have conversion privileges and, if so, the terms and conditions of conversion, including provision for adjustment of the conversion rate in such events as the board of directors shall determine;
5. whether or not the shares of the class or of any series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or date upon or after which they shall be redeemable and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;

6. whether the class or any series shall have a sinking fund for the redemption or purchase of shares of the class or of that series, and, if so, the terms and amount of such sinking fund;

7. the rights of the shares of the class or of any series in the event of voluntary or involuntary dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of the class or of that series; and

8. any other powers, preferences, rights, qualifications, limitations, and restrictions of the class or of any series.

#### ARTICLE FIVE

##### *By-laws*

In furtherance and not in limitation of the powers conferred by statute, the board of directors shall have the power, both before and after receipt of any payment for any of the Corporation's capital stock, to adopt, amend, repeal or otherwise alter the By-laws of the Corporation without any action on the part of the stockholders; provided, however, that the grant of such power to the board of directors shall not divest the stockholders of nor limit their power to adopt, amend, repeal or otherwise alter the By-laws.

#### ARTICLE SIX

##### *Election of Directors*

Elections of directors need not be by written ballot except and to the extent provided in the By-laws of the Corporation.

#### ARTICLE SEVEN

##### *Liability of Directors*

To the fullest extent permitted by the General Corporation Law of the State of Delaware, as amended from time to time, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. No amendment to or repeal of this Article Seven shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omission of such director occurring prior to such amendment.

#### ARTICLE EIGHT

##### *Indemnification*

The Corporation shall indemnify all directors, officers, employees and agents of the Corporation, and shall advance expenses reasonably incurred by such directors, officers, employees and agents in defending any civil, criminal, administrative or investigative action, suit or proceeding, in accordance with and to the fullest extent permitted by Section 145 of the

General Corporation Law of the State of Delaware, as amended from time to time. Any repeal or modification of the provisions of this Article Eight shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

**ARTICLE NINE**  
*Dissolution; Liquidation*

Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths (3/4) in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders of the Corporation, as the case may be, and also on the Corporation.

IN WITNESS WHEREOF, TeleTech Holdings, Inc. has caused this Certificate to be signed by the Secretary on August 1, 1996.

TELETECH HOLDINGS, INC., a Delaware  
corporation

By:

  
\_\_\_\_\_  
Cheryl Slusarchuk,  
Secretary

**CERTIFICATE OF INCORPORATION  
OF  
TELETECH HOLDINGS, INC.**

**ARTICLE ONE**

*Name of Corporation*

The name of the corporation is Teletech Holdings, Inc.

**ARTICLE TWO**

*Address of Registered Agent*

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

**ARTICLE THREE**

*Purpose*

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

**ARTICLE FOUR**

*Stock*

The corporation is authorized to issue two classes of shares to be designated, respectively, "Preferred Stock" and "Common Stock." The total number of shares of capital stock that the corporation is authorized to issue is 51,860,000, of which 50,000,000 shares with \$0.01 per share par value are designated as Common Stock and 1,860,000 shares with \$6.45 per share par value are designated as Preferred Stock. The rights, preferences and privileges of and restrictions on Common Stock and Preferred Stock are as follows:

**A. Common Stock Provisions**

1. Voting Rights. Except as otherwise provided herein or required by law, each share of Common Stock shall entitle the holder thereof to one vote on each matter submitted to a vote of the stockholders of the corporation. Except as otherwise required by law, the holders of the shares of Common Stock shall not vote as separate classes.

2. Dividend Rights. To the extent permitted under the General Corporation Law of the State of Delaware, the holders of Common Stock shall be entitled to receive dividends at such times and in such amounts as may be determined by the board of directors of the corporation.

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### 3. Liquidation Rights.

(a) In the event of any liquidation, dissolution or winding up of the corporation, whether voluntary or involuntary, and subject to the payment in full of the liquidation preferences with respect to Preferred Stock, as provided in Section B.1(a) hereof, the holders of the Common Stock shall be entitled to receive, prior and in preference to any further distribution of the assets or surplus of the corporation to the holders of Preferred Stock by reason of their ownership thereof, an amount equal to a 7% annualized return based upon the Common Stock Per Share Value (as hereinafter defined) of the outstanding shares of Common Stock on the date of such liquidation, dissolution or winding up of the corporation for each share of Common Stock then held by them, commencing upon the date of issuance of the Preferred Stock and less any cash dividends or other cash previously received by each such holder (or its predecessor in interest) with respect to the Common Stock after the date of issuance of the Preferred Stock. For purposes of this Section A.3, the term "Common Stock Per Share Value" shall mean an amount equal to the quotient of (i) the sum of \$53,000,000 plus additional amounts received by the corporation in consideration for the issuance of Common Stock (including, without limitation, amounts received for shares of capital stock convertible into Common Stock upon the conversion thereof) divided by (ii) the number of shares of Common Stock outstanding on the date of any liquidation, dissolution or winding up of the affairs of the corporation. The amount of such aggregate payment per share of Common Stock, based upon the Common Stock Per Share Value, shall be determined pursuant to the following equation:

The Common Stock Per Share Value multiplied by the product of (A) 1.005833 multiplied by (B) the exponent  $n$ , where  $n$  is equal to the number of months commencing with the month in which the Preferred Stock was issued through the month in which the liquidation, dissolution or winding up of the corporation occurs (both months inclusive), the resulting product of which is then reduced by the amount of any cash dividends or other cash distributions received by each such holder (or its predecessor in interest) with respect to the Common Stock after the date of issuance of the Preferred Stock.

Subject to the payment in full of the liquidation preferences with respect to Preferred Stock as provided in Section B.1(a) hereof, if upon the occurrence of such event, the assets and funds thus distributed among the holders of Common Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire remaining assets and funds of the corporation legally available for distribution shall be distributed among the holders of Common Stock in proportion to the shares of Common Stock then held by them.

(b) After payment to the holders of Common Stock of the amounts

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provided in Section A.3(a) hereof and the holders of Preferred Stock of the amounts provided in Section B.1(a) hereof, the entire remaining assets and funds of the corporation legally available for distribution, if any, shall be distributed among the holders of Common Stock and Preferred Stock in proportion to the shares of Common Stock then held by them or issuable to them upon conversion of the shares of Preferred Stock then held by them.

(c) Whenever the distribution provided for in this Section A.1 shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined in good faith by the board of directors.

## B. Preferred Stock Provisions

### 1. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the corporation, whether voluntary or involuntary, the holders of Preferred Stock shall be entitled to receive out of the assets or surplus funds of the corporation legally available therefor, for each share of Preferred Stock then held by them, and prior and in preference to any distribution to the holders of Common Stock by reason of their ownership thereof, an amount equal to \$6.45 per share, plus a per share cash payment calculated on the basis of an annualized 7% internal rate of return, less any cash dividends or other cash previously received by each such holder (or its predecessor in interest) with respect to such Preferred Stock. The amount of such aggregate payment per share of Preferred Stock shall be determined pursuant to the following equation:

\$6.45 per share multiplied by the product of (A) 1.005833 multiplied by (B) the exponent  $n$ , where  $n$  is equal to the number of months commencing with the month in which the Preferred Stock was issued through the month in which the liquidation, dissolution or winding up of the corporation occurs (both months inclusive), the resulting product of which is then reduced by the amount of any cash dividends or other cash distributions previously received by each such holder (or its predecessor in interest) with respect to the Preferred Stock.

If upon the occurrence of such event, the assets and funds to be distributed among the holders of Preferred Stock, *pari passu*, shall be insufficient to permit the payment to such holders of the full preferential amount, then the remaining assets and funds of the corporation legally available for distribution shall be distributed ratably among the holders of Preferred Stock in proportion to the preferential amount each such holder

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is otherwise entitled to receive.

(b) After payment to the holders of Common Stock of the amounts provided in Section A.3(a) hereof and the holders of Preferred Stock of the amounts provided in Section B.1(a) hereof, the entire remaining assets and funds of the corporation legally available for distribution, if any, shall be distributed among the holders of Common Stock and Preferred Stock in proportion to the shares of Common Stock then held by them or issuable to them upon conversion of the shares of Preferred Stock then held by them.

(c) Whenever the distribution provided for in this Section B.1 shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined in good faith by the board of directors.

## 2. Optional Redemption.

(a) For a period of one hundred twenty (120) days commencing on the date which is seven (7) years following the date of issuance of any Preferred Stock and ending at the end of the business day on such 120th day (or the next following business day if such day shall be a Saturday, Sunday or holiday (the "Redemption Period"), holders of at least a majority of the Preferred Stock shall have the right to cause the corporation to redeem, and upon such election, the corporation shall redeem, from any source of funds legally available therefor, all shares of Preferred Stock. The corporation shall redeem the Preferred Stock by paying an amount equal to the greater of (i) the per share Fair Market Value (as hereinafter defined) of the shares of Common Stock into which the Preferred Stock is convertible on the date of the redemption (the "Redemption Date") of the Preferred Stock (the "Participating Redemption Right"), which amount shall be payable, as determined by the corporation's board of directors, either in cash or in Common Stock by converting the Preferred Stock into Common Stock, or (ii) \$6.45 per share in cash, plus a cash payment calculated on the basis of an annualized 7% internal rate of return, less any cash dividends or other cash previously received by each such holder (or predecessor in interest) with respect to the Preferred Stock, the aggregate amount of such per share payment referred to in clause (ii) of the previous sentence being determined pursuant to the following equation:

\$6.45 per share multiplied by the product of (A) 1.005833 multiplied by (B) the exponent  $n$ , where  $n$  is equal to the number of months commencing with the month in which the Preferred Stock was issued through the month in which such shares of Preferred Stock are redeemed hereunder (both months inclusive), the resulting product of which is then reduced by the

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amount of any cash dividends or other cash distributions previously received by each such holder (or its predecessor in interest) with respect to the Preferred Stock (the "Cash Redemption Right");

provided, however, that, notwithstanding anything to the contrary in this Section B.2, in the event that the board of directors elects to pay the holders of Preferred Stock in Common Stock pursuant to the Participating Redemption Right, then upon the affirmative vote of the holders of a majority of Preferred Stock, the holders of Preferred Stock may elect to exercise their Cash Redemption Right in lieu of their Participating Redemption Right such that in no event shall the holders of the Preferred Stock be entitled to receive upon redemption of the Preferred Stock less than the initial issuance price for the Preferred Stock plus an annualized internal rate of return of 7%, as provided pursuant to the Cash Redemption Right.

(b) Exercise of the Cash Redemption Right or the Participating Redemption Right shall be effected by notice to the corporation on behalf of holders of at least a majority of the Preferred Stock at any time during the Redemption Period of the election of the Participating Redemption Right or the Cash Redemption Right.

(c) In the event that the holders of at least a majority of the Preferred Stock do not elect to exercise the Cash Redemption Right or the Participating Redemption Right during the Redemption Period, then the Preferred Stock shall be automatically converted into Common Stock at the then effective Conversion Price (as hereinafter defined).

(d) For purposes of Section B.2(a), "Fair Market Value" per share of Common Stock shall mean the aggregate fair market value of the corporation, as if sold as a going concern, as of the Redemption Date, calculated in accordance with the procedures set forth below, divided by the sum of the number of shares of Common Stock issued and outstanding plus the number of shares issuable pursuant to the conversion of the outstanding Preferred Stock and the exercise of outstanding Options (as hereinafter defined) and other Convertible Securities (as hereinafter defined), as of the Redemption Date.

(i) For purposes of this Section B.2(d), any action to be taken or decision to be made by the holders of Preferred Stock shall mean such action or decision taken by the holders of Preferred Stock acting together as a class that has been approved by the affirmative vote of the holders of at least a majority of Preferred Stock.

(ii) In the event that the corporation's board of directors elects to pay the holders of Preferred Stock in cash pursuant to the Participating

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Redemption Right, then under such circumstances, and only such circumstances, the Fair Market Value shall be determined, at the expense of the corporation, by a single investment banking firm of national standing selected by the corporation and approved by the holders of a majority of the Preferred Stock, which approval shall not be unreasonably withheld or delayed.

(iii) The investment banking firm's calculation of Fair Market Value shall be based upon traditional approaches used by investment banking firms in calculating fair market values of entities in the corporation's business, and, in particular, analyses and comparisons of previous sales of such comparable entities and their respective earnings multiples and ratios as compared to those of the corporation. The corporation shall provide the investment banking firm with all of the financial statements, and to the extent available, *pro forma* and projected financial statements, including income statements, balance sheets, and statements of cash flows, in each case prepared in accordance with generally accepted accounting principles and the corporation's customary past practices, and all such other information as the investment banking firm shall request in order for the investment banking firm to calculate Fair Market Value.

(iv) The calculation of Fair Market Value of the investment banking firm in accordance with the above procedures shall be conclusive and binding upon the corporation and the holders of the Preferred Stock, absent manifest error.

(e) The redemption effected pursuant to this Section B.2 shall be made on a pro rata basis among the holders of Preferred Stock in proportion to the shares of Preferred Stock then held by them. If the funds of the corporation legally available for redemption of shares of Preferred Stock are insufficient to redeem the total number of shares to be redeemed on the Redemption Date, those funds which are legally available will be used to redeem the maximum possible number of shares of Preferred Stock ratably among the holders of such shares. The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the corporation are legally available for the redemption of the remaining shares of Preferred Stock, such funds will immediately be used to redeem the balance of the shares of Preferred Stock which the corporation has become obliged to redeem, but which it has not redeemed.

(f) Within fifteen (15) business days following receipt by the corporation of notice from the holders of the Preferred Stock pursuant to Section B.2(b) hereof, the corporation shall establish the Redemption Date, which shall be not less than ten

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(10), nor more than twenty (20) business days following the later of (i) the date the corporation received such notice pursuant to Section B.2(b) or (ii) the date that the Fair Market Value has been determined if, and only if, the Participating Redemption Price is elected, is to be paid in cash and the holders of a majority of the shares of Preferred Stock have not elected to receive the Cash Redemption Right in lieu thereof. The corporation shall provide written notification by mail, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given pursuant to Section B.2(b)) of Preferred Stock to be redeemed, at the address last shown on the records of the corporation for such holder, (i) notifying such holder of the redemption to be effected, (ii) specifying the number of shares to be redeemed from such holder, the Redemption Date (which shall be not less than ten (10) business days, nor more than twenty (20) business days, following the date of such notice), the consideration to be paid therefor and the place at which payment may be obtained, and (iii) calling upon such holder to surrender to the corporation, in the manner and at the place designated, the certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). If an Event of Default (as hereinafter defined) shall occur, then the corporation shall establish a default redemption date and provide holders of the Preferred Stock with a Redemption Notice at least ten (10) business days prior to any redemption and otherwise provide notice in accordance with this Section B.2(f) as it relates to the default redemption date.

(g) On or prior to the Redemption Date, the corporation shall deposit sufficient funds to pay the redemption amount pursuant to the Cash Redemption Right or the Participating Redemption Right, as set forth in Section B.2(a) hereof for all shares of Preferred Stock designated for redemption in the Redemption Notice and not yet redeemed with a bank or trust corporation having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to pay such redemption amount for such shares to their respective holders on or after the Redemption Date upon receipt of notification from the corporation that such holder has surrendered such holder's share certificate to the corporation pursuant to Section B.2(f) hereof. As of the Redemption Date, the deposit shall constitute full payment of the shares to their holders, and from and after the Redemption Date, the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to such shares and shall have no rights with respect thereto except the rights to receive from the bank or trust corporation payment of the redemption price of the shares, without further interest, upon surrender of their certificates therefor. Such instructions shall also provide that any moneys deposited by the corporation pursuant to this Section B.2(g) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section B.5(a)(i) hereof prior to the Redemption Date shall be returned to the corporation promptly upon such

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conversion. The balance of any moneys deposited by the corporation pursuant to this Section B.2(g) remaining unclaimed at the expiration of six (6) months following the Redemption Date shall thereafter be returned to the corporation upon its request expressed in a resolution of its board of directors.

(h) So long as any shares of Preferred Stock remain outstanding, in the event the corporation fails to redeem shares of Preferred Stock as required pursuant to Section B.2 hereof by no later than the Redemption Date (an "Event of Default"), then notwithstanding anything to the contrary in this Certificate of Incorporation, the amount that the holders of Preferred Stock are entitled to receive otherwise pursuant to Section B.2 hereof shall be increased such that the annualized rate of return for the shares of Preferred Stock remaining outstanding shall be equal to a per annum rate of interest equal to Citibank, N.A.'s prime rate of interest plus five percent (5%) for a thirty (30) day period following the Redemption Date, with such rate of interest increasing by 1/2% in each subsequent thirty (30) day period that the Preferred Stock remains outstanding; provided, however, that the maximum rate of interest shall not exceed twenty-five percent (25%) per annum.

### 3. Voting Rights.

(a) General. Except as otherwise required by law or as otherwise set forth herein, each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could be converted immediately after the close of business on the record date fixed for any annual or special meeting of stockholders or the effective date of any written consent, and shall have voting rights and powers equal to the voting rights and powers of the holders of Common Stock. The holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the by-laws of the corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

#### (b) Board of Directors.

(i) At all times prior to the occurrence of a Qualified IPO (as hereinafter defined), the board of directors of the corporation shall consist of seven (7) members. The holders of Preferred Stock, as a class, shall be entitled to elect two (2) members of the board of directors. So long as any of the Preferred Stock is outstanding, the holders of Common Stock, as a class, shall be entitled to elect five (5) members of the board of directors.

(ii) For purposes of this Section, the following terms shall have the

following definitions:

(A) "Fully Diluted Common Stock" shall mean the total number of shares of Common Stock outstanding after taking into account the following: (w) all outstanding shares of Common Stock; (x) all shares of Common Stock issuable upon conversion of Preferred Stock; (y) all shares of Common Stock reserved for issuance pursuant to the corporation's employee stock option plan; and (z) any stock splits, stock dividends, reclassifications, combinations or similar events ("Stock Adjustments"); provided, however, that Fully Diluted Common Stock shall not include shares of Common Stock or securities convertible into, exchangeable with or immediately exercisable for Common Stock where (1) such shares or securities are issued in connection with any acquisition by, or business combination involving, the corporation, which transaction is determined by the board of directors of the corporation to be on terms which are fair and equitable to the corporation and its stockholders and approved in good faith by the board of directors of the corporation, or (2) holders of a majority of Preferred Stock have not exercised their rights of first refusal with respect to the issuance of such shares or securities pursuant to applicable agreements.

(B) "Qualified IPO" shall mean a firm commitment, underwritten public offering of Common Stock effected by means of a registration statement, filed with the Securities and Exchange Commission by the corporation under the Securities Act of 1933, as amended, where both of the following conditions are satisfied:

(x) the offering results in 20% or more of the Fully Diluted Common Stock, calculated without regard to Common Stock issued pursuant to the corporation's employee stock option plan, being owned of record and beneficially by Persons who are not Affiliates of the corporation and available for trading by public investors; and

(y) the Qualified IPO Minimum Ratio (as hereinafter defined) equals or exceeds:

(1) One and Three-Quarters (1.75), if the offering occurs on or before December 31, 1997;

(2) Two (2.0), if the offering occurs after December 31, 1997, but on or before December 31,

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1998; and

(3) Two and One-Half (2.5), if the offering occurs after December 31, 1998, but on or before December 31, 1999.

(C) "Qualified IPO Minimum Ratio" shall mean a fraction (x) the numerator of which is the price to the public per share of Common Stock sold in the Qualified IPO, and (y) the denominator of which shall be the quotient of (1) Twelve Million Dollars (\$12,000,000), divided by (2) the total number of shares of Common Stock issued or issuable upon conversion of such Preferred Stock, as adjusted for stock splits, stock dividends, recapitalization, share repurchases, combinations or similar events with respect to such shares of Common Stock and Preferred Stock.

(D) "Affiliate" of any Person shall mean a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person and any member of the "immediate family" of such Affiliate. Members of a Person's "immediate family" shall mean and include only such Person's spouse, children, grandchildren and parents, "children" shall include any adopted child of such Person and "grandchildren" shall include any child adopted by a child of such Person.

(iii) In the case of any vacancy in the office of a director occurring among the directors elected by the holders of Preferred Stock pursuant to the second sentence of Section B.3(b)(i) hereof, the remaining director so elected by the holders of Preferred Stock may, by affirmative vote of the remaining director so elected if there is but one, or if there is no such director remaining, by the affirmative vote of the holders of a majority of the shares of Preferred Stock, as a class, elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of (A) Preferred Stock, (B) Common Stock or (C) any director so elected as provided in the preceding sentence hereof, may be removed during the aforesaid term of office, whether with or without cause, only by the affirmative vote of the holders of a majority of Preferred Stock or Common Stock, as the case may be, electing such director.

(c) Change of Control. Any attempts to effectuate a "change of control" of the corporation on or prior to December 31, 1999 shall require the approval of the holders of a majority of the issued and outstanding Preferred Stock; provided, however, that no such approval is required if, and only if, (i) the change in control is effected pursuant to the sale of all, and not less than all, Common Stock outstanding held of record or beneficially

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by Kenneth Tuchman and/or his Affiliates at the time of sale (other than shares of Common Stock issued or issuable pursuant to an employee stock option plan), and (ii) such sale shall be effected in accordance with all applicable agreements, if any, by and among holders of Common Stock and Preferred Stock. For purposes of this Section B.3(c), "change of control" shall mean (A) any sale or transfer or series of sales or transfers of Common Stock, Preferred Stock or any other equity securities of the corporation which result in any Person or group of Affiliated Persons (other than Kenneth Tuchman, the holders of a majority of the Preferred Stock and/or certain of their Affiliates) having a majority voting interest in the corporation or owning more than 50% of the aggregate Common Stock, Preferred Stock, Common Stock issuable upon conversion of Preferred Stock and other capital stock of the corporation outstanding at the time of such sales or transfers or series of sales or transfers, (B) a sale or transfer of all or substantially all of the operating assets of the corporation or any of its subsidiaries to any Person other than a wholly-owned subsidiary of the corporation, or (C) a merger or consolidation involving the corporation and resulting in a 25% or greater reduction in the aggregate percentage equity interest of Kenneth Tuchman and/or certain of his Affiliates, if any, in the corporation or the surviving entity, as the case may be, immediately after consummation of such transaction, as compared to the aggregate percentage equity interest of Kenneth Tuchman, and such certain Affiliates, if any, in the corporation prior to the consummation of such transaction. "Person" shall mean an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

4. Dividends. In the event any cash dividend or other distribution payable in cash or other property is declared on Common Stock, each holder of shares of Preferred Stock on the record date for such dividend or distribution shall be entitled to receive on the date of payment or distribution of such dividend or other distributions, the amount per share of cash or property equal to the cash or property which would be received by the holders of the number of shares of Common Stock into which such shares of Preferred Stock could be converted pursuant to Section B.5(a)(i) hereof immediately prior to such record date.

5. Conversion Rights.

(a) Right to Convert.

(i) Optional Conversion. Each share of Preferred Stock will be convertible, at the option of the holder thereof, at the office of the corporation or any transfer agent for such stock, into Common Stock at any time after the date of issuance of such shares and prior to the close of business on the business day prior to the Redemption Date, respectively. Subject to adjustment as set forth below, Preferred Stock shall be convertible into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$6.45 by the

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Conversion Price, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The price at which shares of Common Stock shall be deliverable upon conversion of shares of Preferred Stock (the "Conversion Price") shall initially be \$6.45 per share of Common Stock. Such initial Conversion Price shall be adjusted as hereinafter provided.

(ii) Mandatory Conversion. Each share of Preferred Stock will be automatically converted into shares of Common Stock at the then effective Conversion Price, (A) immediately upon the consummation of a Qualified IPO and (B) on the next business day immediately following the expiration of the Redemption Period (i.e., the 121st day) pursuant to Section B.2(c) in the event that the holders of Preferred Stock do not elect to exercise the Cash Redemption Right or to accept cash in connection with the Participating Redemption Right.

(b) Mechanics of Conversion. Before any holder of Preferred Stock will be entitled to convert such shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the corporation (or at such other place as the corporation may designate in a written notice sent to the holder by first-class mail, postage prepaid, at its address shown on the books of the corporation), and give written notice to the corporation stating the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The corporation, as soon as practicable thereafter, will issue and deliver at such office to such holder of Preferred Stock or to such holder's nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which such holder is entitled. In the event of an optional conversion pursuant to Section B.5(a)(i) hereof, such conversion will be deemed to have been made immediately prior to the close of business on the date when the corporation receives a holder's certificate or certificates for Preferred Stock and any other documents or instruments required hereunder or by applicable law, and the person or persons entitled to receive the shares of Common Stock issuable upon conversion will be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. In the event of a mandatory conversion pursuant to Section B.5(a)(ii)(A) hereof, the conversion shall be conditioned upon the consummation of the sale of securities and the closing with the underwriters in a Qualified IPO, in which event the Person or Persons entitled to receive Common Stock upon conversion of Preferred Stock shall not be deemed to have converted such stock until immediately prior to the closing of such sale of securities.

(c) Adjustment to Conversion Prices for Certain Diluting Issues.

(i) Special Definitions. For purposes of this Section B.5(c), the following definitions apply:

(1) "Options" shall mean rights, options, or warrants to subscribe

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for, purchase or otherwise acquire either Common Stock or Convertible Securities (as hereinafter defined other than options held by employees and issued pursuant to (A) an employee stock option plan adopted by the corporation and approved by the corporation's board of directors, or (B) an employment agreement with a key employee designated as such by a resolution of the corporation's board of directors, such board of directors acting in good faith).

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

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

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section B.5(c)(iii), deemed to be issued) by the corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(A) upon conversion of shares of Preferred Stock;

(B) to officers, directors or employees of, or consultants to, the corporation pursuant to the corporation's stock option or stock purchase plans or agreements on terms approved by the board of directors, subject to Stock Adjustments;

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

(D) for which adjustment of the Conversion Price is made pursuant to Section B.5(c).

(E) in connection with a transaction that is determined by the corporation's board of directors to be on terms which are fair and equitable to the corporation and its stockholders, has been approved in good faith by the corporation's board of directors, does not involve a Change of Control and:

(1) is effected to attract key employees for the corporation or its subsidiaries;

(2) consists of an acquisition by, or business combination involving, the corporation; or

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(3) consists of the issuance of Common Stock to a corporation or other business entity for a strategic business purpose in connection with a business relationship and interest with the corporation for a consideration (including, without limitation, aggregate sales revenue) of at least \$6,000,000.

(ii) No Adjustment of Conversion Prices. Notwithstanding any provision herein to the contrary, except as otherwise provided in Section B.2(h) hereof, no adjustment in the Conversion Price, respectively, shall be made unless the consideration per share (determined pursuant to Section B.5(c)(iv) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the corporation is less than the Conversion Price for the Preferred Stock in effect on the date of, and immediately prior to, such issue.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event 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 then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such 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:

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

(2) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the corporation, or decrease or increase 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

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Increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the Conversion Price shall affect Common Stock previously issued upon conversion of Preferred Stock):

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

(A) In the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by 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

(B) In the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the corporation (determined pursuant to Section B.5(c)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(4) No readjustment pursuant to Section B.5(c)(iii)(2) or (3) hereof shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (a) the Conversion Price on the original adjustment date, or (b) 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

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(5) 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, whereupon such adjustment shall be made in the same manner provided in Section B.5(c)(iii)(3) hereof.

(iv) Adjustment of Conversion Prices upon Issuance of Additional Shares of Common Stock. In the event the corporation, at any time after the Original Issue Date, shall be deemed to issue Additional Shares of Common Stock pursuant to Section B.5(c) without consideration or for a consideration per share less than the Conversion Price, immediately prior to such issue, then and in such event, the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such deemed issue plus the number of shares of Common Stock which the aggregate consideration received by the corporation for the total number of Additional Shares of Common Stock deemed to be issued pursuant to Section B.5(c) hereof would purchase at such Conversion Price in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock deemed issued pursuant to Section B.5(c). For purposes of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated on a fully diluted basis, as if all shares of Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock immediately prior to such issuance (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date, but not including in such calculation any additional shares of Common Stock issuable with respect to shares of Preferred Stock, Convertible Securities, or outstanding Options, solely as a result of the adjustment of the Conversion Price resulting from the deemed issuance of Additional Shares of Common Stock pursuant to Section B.5(c) causing such adjustment.

(v) Determination of Consideration. For purposes of Section B.6(c), 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 excluding amounts paid or payable for accrued interest or accrued dividends;

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(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 B.5(c)(iii), relating to Options and Convertible Securities shall be determined by dividing:

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

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

(d) Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that the corporation at any time or from time to time after the Original Issue Date shall declare or pay, without consideration, any dividend on Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then Conversion Price in effect immediately

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prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that the corporation shall declare or pay, without consideration, any dividend on Common Stock payable in any right to acquire Common Stock for no consideration, then the corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

(e) Adjustments for Reclassification and Reorganization. If Common Stock issuable upon conversion of Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Section B.5(d) hereof or a merger or other reorganization referred to in Section B.1(b) hereof), the Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of Preferred Stock immediately before such change or cash or other property in respect thereof.

(f) No Impairment. The corporation will not, by amendment of this 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 B.5 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 Preferred Stock against impairment.

(g) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section B.5, 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 Stock a certificate executed by the corporation's chief operating and financial officers and independent certified public accountants 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 Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) 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 Stock.

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(h) Notices of Record Date. In the event that the corporation shall propose at any time: (i) to declare any dividend or distribution upon 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 subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (iii) to effect any reclassification or recapitalization of the outstanding Common Stock involving a change in Common Stock; or (iv) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the corporation shall send to the holders of Preferred Stock:

(1) At least thirty (30) 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, if any, in respect of the matters referred to in (h)(iii) and (h)(iv) above; and

(2) In the case of the matters referred to in (h)(iii) and (h)(iv) above, at least thirty (30) 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 notice referred to in subparagraphs (1) and (2) above shall set forth in detail all material terms of the event or action proposed to be taken by the corporation, any adjustment to the Conversion Price resulting from or required as a result of such event or action and the calculations upon which such adjustment is based.

(i) Issue Taxes. The corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of Preferred Stock pursuant hereto; provided, however, that the corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(j) Reservation of Stock Issuable upon Conversion. The corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock the full number of shares of Common Stock deliverable (i) under the corporation's employee stock option plan and (ii) upon conversion of all of the then outstanding Preferred Stock. The corporation shall, at its own expense, take all such actions and obtain all permits and orders as may be necessary to enable the corporation lawfully to issue Common Stock upon the conversion of shares of Preferred Stock.

(k) Fractional Shares. No fractional share shall be issued upon the conversion

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of any share or shares of Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the board of directors).

(l) Notices. Any notice required by the provisions of this Section B.5 to be given to the holders of shares of Preferred Stock shall be deemed given if addressed to each holder of record at his address as it appears on the books of the corporation and (i) deposited in the United States mail, postage prepaid, (ii) sent by facsimile transmission, or (iii) delivered by nationally recognized private courier.

6. Amendments to Certificate of Incorporation or By-laws. The corporation shall not amend this Certificate of Incorporation or its By-laws without the approval, by vote or written consent, of the holders of at least a majority of Preferred Stock if such amendment would change any of the rights, preferences or privileges provided for herein for the benefit of any shares of Preferred Stock. Without limiting the generality of the preceding sentence, the corporation will not amend this Certificate of Incorporation or its By-laws without the approval of the holders of at least a majority of Preferred Stock if such amendment would:

(i) Change the relative seniority rights of the holders of such Preferred Stock as to the payment of dividends in relation to the holders of any other capital stock of the corporation;

(ii) Reduce the amount payable to the holders of Preferred Stock upon the voluntary or involuntary liquidation, dissolution, or winding up of the corporation, or change the relative seniority of the liquidation preferences of the holders of such Preferred Stock to the rights upon liquidation of the holders of any other capital stock of the Corporation;

(iii) Reduce the rates of redemption specified in Sections B.2 hereof with respect to Preferred Stock;

(iv) Delay the Redemption Date as provided in Section B.2(a) hereof;

(v) Make Preferred Stock redeemable at the option of the corporation;

or

(vi) Cancel or modify the conversion rights for Preferred Stock provided

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for in Section B.5 hereof.

7. No Reissuance of Preferred Stock.

No share or shares of Preferred Stock acquired by the corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the corporation shall be authorized to issue.

**ARTICLE V**

*By-laws*

In furtherance and not in limitation of the powers conferred by statute, the board of directors shall have the power, both before and after receipt of any payment for any of the corporation's capital stock, to adopt, amend, repeal or otherwise alter the By-laws of the Corporation without any action on the part of the stockholders; provided, however, that the grant of such power to the board of directors shall not divest the stockholders of nor limit their power to adopt, amend, repeal or otherwise alter the By-laws.

**ARTICLE VI**

*Election of Directors*

Elections of directors need not be by written ballot except and to the extent provided in the by-laws of the corporation.

**ARTICLE VII**

*Liability of Directors*

No director shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing sentence, a director shall be liable to the extent provided by applicable law (i) for breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the General Corporation Law of the State of Delaware or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this Article VII shall apply to or have any effect on the liability or alleged liability of any director of the corporation for or with respect to any acts or omission of such director occurring prior to such amendment.

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**ARTICLE VIII**  
***Indemnification***

A. Right to Indemnification - Good Faith. Any person who was or is a party or is threatened to made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprises, shall be indemnified by the corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

B. Right to Indemnification - Adjudication. The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of Delaware or the Court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of Delaware, or such other court shall deem proper.

C. Expenses. To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections A and B of this Article VIII, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

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D. Standard of Conduct. Any indemnification pursuant to Sections A and B of this Article VIII (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in Sections A and B of this Article VIII. Such determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or if such a quorum is not obtainable (or, even if obtainable a quorum of disinterested directors so directs) by independent legal counsel in written opinion, or by the stockholders.

E. Prepayment of Expenses. Expenses (including attorney's fees) incurred by a director, officer, employee or agent of the corporation in defending a civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this Article VIII.

F. Non-Exclusivity of Rights. The indemnification and advancement of expenses provided by this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under statute, provision of this Certificate of Incorporation or the by-laws of the corporation, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

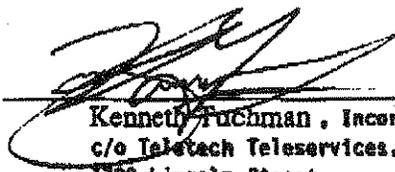
G. Insurance. If available on commercially reasonable terms, the corporation shall purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provision of this Article VIII.

H. Definitions. For the purpose of this Article VIII, all words and phrases used herein shall have the meanings ascribed to them under Section 145 of the General Corporation Law of the State of Delaware.

I. Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

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The undersigned incorporator, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, does make this certificate, hereby declaring and certifying that this is his act and deed and the facts stated herein are true, and accordingly has hereunto set his hand this 21 day of December, 1994.

  
Kenneth Fuchman, Incorporator  
c/o Teletach Teleservices, Inc.  
1700 Lincoln Street  
14th Floor  
Denver, CO 80203

**RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
TELETECH HOLDINGS, INC.**

TELETECH HOLDINGS, INC., a Delaware corporation, for the purposes hereinafter stated, under and pursuant to the provisions of the General Corporation Law of the State of Delaware, as amended, does hereby certify as follows:

1. The name of the corporation (the "Corporation") is TeleTech Holdings, Inc.
2. The original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on December 22, 1994.
3. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, as amended, this Restated Certificate of Incorporation restates and integrates and further amends the provisions of the original Certificate of Incorporation of the Corporation.
4. This Restated Certificate of Incorporation was duly adopted by written consents of the stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, as amended, and written notice of the adoption of this Restated Certificate of Incorporation has been given as provided by Section 228 of the General Corporation Law of the State of Delaware, as amended, to every stockholder entitled to such notice.
5. The text of the Certificate of Incorporation of the Corporation is hereby restated and further amended to read in its entirety as follows:

**ARTICLE ONE**  
*Name of Corporation*

The name of the Corporation is TeleTech Holdings, Inc.

**ARTICLE TWO**  
*Address of Registered Agent*

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

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 11:45 AM 08/01/1996  
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### ARTICLE THREE

#### *Purpose*

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as amended. The Corporation shall have perpetual existence.

### ARTICLE FOUR

#### *Stock*

A. Authorized Stock. The total number of shares of stock which the Corporation shall have authority to issue is 160,000,000, of which 150,000,000 shares with \$0.01 per share par value are designated as Common Stock and 10,000,000 shares of \$0.01 per share par value are designated as Preferred Stock.

B. Right to Designate Preferred Stock. The board of directors of the Corporation is authorized, subject to limitations prescribed by law, to provide by resolution or resolutions for the issuance of the shares of Preferred Stock as a class or in series and, by filing a certificate of designations, pursuant to the General Corporation Law of the State of Delaware, as amended, setting forth a copy of such resolution or resolutions to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences, and rights of the shares of the class or of each such series and the qualifications, limitations, and restrictions thereof. The authority of the board of directors with respect to the class or each series shall include, but not be limited to, determination of the following:

1. the number of shares constituting any series and the distinctive designation of that series;
2. the dividend rate on the shares of the class or of any series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of the class or of that series;
3. whether the class or any series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;
4. whether the class or any series shall have conversion privileges and, if so, the terms and conditions of conversion, including provision for adjustment of the conversion rate in such events as the board of directors shall determine;
5. whether or not the shares of the class or of any series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or date upon or after which they shall be redeemable and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;

6. whether the class or any series shall have a sinking fund for the redemption or purchase of shares of the class or of that series, and, if so, the terms and amount of such sinking fund;

7. the rights of the shares of the class or of any series in the event of voluntary or involuntary dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of the class or of that series; and

8. any other powers, preferences, rights, qualifications, limitations, and restrictions of the class or of any series.

#### ARTICLE FIVE

##### *By-laws*

In furtherance and not in limitation of the powers conferred by statute, the board of directors shall have the power, both before and after receipt of any payment for any of the Corporation's capital stock, to adopt, amend, repeal or otherwise alter the By-laws of the Corporation without any action on the part of the stockholders; provided, however, that the grant of such power to the board of directors shall not divest the stockholders of nor limit their power to adopt, amend, repeal or otherwise alter the By-laws.

#### ARTICLE SIX

##### *Election of Directors*

Elections of directors need not be by written ballot except and to the extent provided in the By-laws of the Corporation.

#### ARTICLE SEVEN

##### *Liability of Directors*

To the fullest extent permitted by the General Corporation Law of the State of Delaware, as amended from time to time, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. No amendment to or repeal of this Article Seven shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omission of such director occurring prior to such amendment.

#### ARTICLE EIGHT

##### *Indemnification*

The Corporation shall indemnify all directors, officers, employees and agents of the Corporation, and shall advance expenses reasonably incurred by such directors, officers, employees and agents in defending any civil, criminal, administrative or investigative action, suit or proceeding, in accordance with and to the fullest extent permitted by Section 145 of the

General Corporation Law of the State of Delaware, as amended from time to time. Any repeal or modification of the provisions of this Article Eight shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

**ARTICLE NINE**  
*Dissolution; Liquidation*

Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths (3/4) in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders of the Corporation, as the case may be, and also on the Corporation.

IN WITNESS WHEREOF, TeleTech Holdings, Inc. has caused this Certificate to be signed by the Secretary on August 1, 1996.

TELETECH HOLDINGS, INC., a Delaware  
corporation

By:

  
\_\_\_\_\_  
Cheryl Slusarchuk,  
Secretary

**CERTIFICATE OF INCORPORATION  
OF  
TELETECH HOLDINGS, INC.**

**ARTICLE ONE**

*Name of Corporation*

The name of the corporation is Teletech Holdings, Inc.

**ARTICLE TWO**

*Address of Registered Agent*

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

**ARTICLE THREE**

*Purpose*

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

**ARTICLE FOUR**

*Stock*

The corporation is authorized to issue two classes of shares to be designated, respectively, "Preferred Stock" and "Common Stock." The total number of shares of capital stock that the corporation is authorized to issue is 51,860,000, of which 50,000,000 shares with \$0.01 per share par value are designated as Common Stock and 1,860,000 shares with \$6.45 per share par value are designated as Preferred Stock. The rights, preferences and privileges of and restrictions on Common Stock and Preferred Stock are as follows:

**A. Common Stock Provisions**

1. Voting Rights. Except as otherwise provided herein or required by law, each share of Common Stock shall entitle the holder thereof to one vote on each matter submitted to a vote of the stockholders of the corporation. Except as otherwise required by law, the holders of the shares of Common Stock shall not vote as separate classes.

2. Dividend Rights. To the extent permitted under the General Corporation Law of the State of Delaware, the holders of Common Stock shall be entitled to receive dividends at such times and in such amounts as may be determined by the board of directors of the corporation.

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### 3. Liquidation Rights.

(a) In the event of any liquidation, dissolution or winding up of the corporation, whether voluntary or involuntary, and subject to the payment in full of the liquidation preferences with respect to Preferred Stock, as provided in Section B.1(a) hereof, the holders of the Common Stock shall be entitled to receive, prior and in preference to any further distribution of the assets or surplus of the corporation to the holders of Preferred Stock by reason of their ownership thereof, an amount equal to a 7% annualized return based upon the Common Stock Per Share Value (as hereinafter defined) of the outstanding shares of Common Stock on the date of such liquidation, dissolution or winding up of the corporation for each share of Common Stock then held by them, commencing upon the date of issuance of the Preferred Stock and less any cash dividends or other cash previously received by each such holder (or its predecessor in interest) with respect to the Common Stock after the date of issuance of the Preferred Stock. For purposes of this Section A.3, the term "Common Stock Per Share Value" shall mean an amount equal to the quotient of (i) the sum of \$53,000,000 plus additional amounts received by the corporation in consideration for the issuance of Common Stock (including, without limitation, amounts received for shares of capital stock convertible into Common Stock upon the conversion thereof) divided by (ii) the number of shares of Common Stock outstanding on the date of any liquidation, dissolution or winding up of the affairs of the corporation. The amount of such aggregate payment per share of Common Stock, based upon the Common Stock Per Share Value, shall be determined pursuant to the following equation:

The Common Stock Per Share Value multiplied by the product of (A) 1.005833 multiplied by (B) the exponent  $n$ , where  $n$  is equal to the number of months commencing with the month in which the Preferred Stock was issued through the month in which the liquidation, dissolution or winding up of the corporation occurs (both months inclusive), the resulting product of which is then reduced by the amount of any cash dividends or other cash distributions received by each such holder (or its predecessor in interest) with respect to the Common Stock after the date of issuance of the Preferred Stock.

Subject to the payment in full of the liquidation preferences with respect to Preferred Stock as provided in Section B.1(a) hereof, if upon the occurrence of such event, the assets and funds thus distributed among the holders of Common Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire remaining assets and funds of the corporation legally available for distribution shall be distributed among the holders of Common Stock in proportion to the shares of Common Stock then held by them.

(b) After payment to the holders of Common Stock of the amounts

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provided in Section A.3(a) hereof and the holders of Preferred Stock of the amounts provided in Section B.1(a) hereof, the entire remaining assets and funds of the corporation legally available for distribution, if any, shall be distributed among the holders of Common Stock and Preferred Stock in proportion to the shares of Common Stock then held by them or issuable to them upon conversion of the shares of Preferred Stock then held by them.

(c) Whenever the distribution provided for in this Section A.1 shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined in good faith by the board of directors.

## B. Preferred Stock Provisions

### 1. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the corporation, whether voluntary or involuntary, the holders of Preferred Stock shall be entitled to receive out of the assets or surplus funds of the corporation legally available therefor, for each share of Preferred Stock then held by them, and prior and in preference to any distribution to the holders of Common Stock by reason of their ownership thereof, an amount equal to \$6.45 per share, plus a per share cash payment calculated on the basis of an annualized 7% internal rate of return, less any cash dividends or other cash previously received by each such holder (or its predecessor in interest) with respect to such Preferred Stock. The amount of such aggregate payment per share of Preferred Stock shall be determined pursuant to the following equation:

\$6.45 per share multiplied by the product of (A) 1.005833 multiplied by (B) the exponent  $n$ , where  $n$  is equal to the number of months commencing with the month in which the Preferred Stock was issued through the month in which the liquidation, dissolution or winding up of the corporation occurs (both months inclusive), the resulting product of which is then reduced by the amount of any cash dividends or other cash distributions previously received by each such holder (or its predecessor in interest) with respect to the Preferred Stock.

If upon the occurrence of such event, the assets and funds to be distributed among the holders of Preferred Stock, *pari passu*, shall be insufficient to permit the payment to such holders of the full preferential amount, then the remaining assets and funds of the corporation legally available for distribution shall be distributed ratably among the holders of Preferred Stock in proportion to the preferential amount each such holder

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is otherwise entitled to receive.

(b) After payment to the holders of Common Stock of the amounts provided in Section A.3(a) hereof and the holders of Preferred Stock of the amounts provided in Section B.1(a) hereof, the entire remaining assets and funds of the corporation legally available for distribution, if any, shall be distributed among the holders of Common Stock and Preferred Stock in proportion to the shares of Common Stock then held by them or issuable to them upon conversion of the shares of Preferred Stock then held by them.

(c) Whenever the distribution provided for in this Section B.1 shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined in good faith by the board of directors.

## 2. Optional Redemption.

(a) For a period of one hundred twenty (120) days commencing on the date which is seven (7) years following the date of issuance of any Preferred Stock and ending at the end of the business day on such 120th day (or the next following business day if such day shall be a Saturday, Sunday or holiday (the "Redemption Period"), holders of at least a majority of the Preferred Stock shall have the right to cause the corporation to redeem, and upon such election, the corporation shall redeem, from any source of funds legally available therefor, all shares of Preferred Stock. The corporation shall redeem the Preferred Stock by paying an amount equal to the greater of (i) the per share Fair Market Value (as hereinafter defined) of the shares of Common Stock into which the Preferred Stock is convertible on the date of the redemption (the "Redemption Date") of the Preferred Stock (the "Participating Redemption Right"), which amount shall be payable, as determined by the corporation's board of directors, either in cash or in Common Stock by converting the Preferred Stock into Common Stock, or (ii) \$6.45 per share in cash, plus a cash payment calculated on the basis of an annualized 7% internal rate of return, less any cash dividends or other cash previously received by each such holder (or predecessor in interest) with respect to the Preferred Stock, the aggregate amount of such per share payment referred to in clause (ii) of the previous sentence being determined pursuant to the following equation:

\$6.45 per share multiplied by the product of (A) 1.005833 multiplied by (B) the exponent  $n$ , where  $n$  is equal to the number of months commencing with the month in which the Preferred Stock was issued through the month in which such shares of Preferred Stock are redeemed hereunder (both months inclusive), the resulting product of which is then reduced by the

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amount of any cash dividends or other cash distributions previously received by each such holder (or its predecessor in interest) with respect to the Preferred Stock (the "Cash Redemption Right");

provided, however, that, notwithstanding anything to the contrary in this Section B.2, in the event that the board of directors elects to pay the holders of Preferred Stock in Common Stock pursuant to the Participating Redemption Right, then upon the affirmative vote of the holders of a majority of Preferred Stock, the holders of Preferred Stock may elect to exercise their Cash Redemption Right in lieu of their Participating Redemption Right such that in no event shall the holders of the Preferred Stock be entitled to receive upon redemption of the Preferred Stock less than the initial issuance price for the Preferred Stock plus an annualized internal rate of return of 7%, as provided pursuant to the Cash Redemption Right.

(b) Exercise of the Cash Redemption Right or the Participating Redemption Right shall be effected by notice to the corporation on behalf of holders of at least a majority of the Preferred Stock at any time during the Redemption Period of the election of the Participating Redemption Right or the Cash Redemption Right.

(c) In the event that the holders of at least a majority of the Preferred Stock do not elect to exercise the Cash Redemption Right or the Participating Redemption Right during the Redemption Period, then the Preferred Stock shall be automatically converted into Common Stock at the then effective Conversion Price (as hereinafter defined).

(d) For purposes of Section B.2(a), "Fair Market Value" per share of Common Stock shall mean the aggregate fair market value of the corporation, as if sold as a going concern, as of the Redemption Date, calculated in accordance with the procedures set forth below, divided by the sum of the number of shares of Common Stock issued and outstanding plus the number of shares issuable pursuant to the conversion of the outstanding Preferred Stock and the exercise of outstanding Options (as hereinafter defined) and other Convertible Securities (as hereinafter defined), as of the Redemption Date.

(i) For purposes of this Section B.2(d), any action to be taken or decision to be made by the holders of Preferred Stock shall mean such action or decision taken by the holders of Preferred Stock acting together as a class that has been approved by the affirmative vote of the holders of at least a majority of Preferred Stock.

(ii) In the event that the corporation's board of directors elects to pay the holders of Preferred Stock in cash pursuant to the Participating

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Redemption Right, then under such circumstances, and only such circumstances, the Fair Market Value shall be determined, at the expense of the corporation, by a single investment banking firm of national standing selected by the corporation and approved by the holders of a majority of the Preferred Stock, which approval shall not be unreasonably withheld or delayed.

(iii) The investment banking firm's calculation of Fair Market Value shall be based upon traditional approaches used by investment banking firms in calculating fair market values of entities in the corporation's business, and, in particular, analyses and comparisons of previous sales of such comparable entities and their respective earnings multiples and ratios as compared to those of the corporation. The corporation shall provide the investment banking firm with all of the financial statements, and to the extent available, *pro forma* and projected financial statements, including income statements, balance sheets, and statements of cash flows, in each case prepared in accordance with generally accepted accounting principles and the corporation's customary past practices, and all such other information as the investment banking firm shall request in order for the investment banking firm to calculate Fair Market Value.

(iv) The calculation of Fair Market Value of the investment banking firm in accordance with the above procedures shall be conclusive and binding upon the corporation and the holders of the Preferred Stock, absent manifest error.

(e) The redemption effected pursuant to this Section B.2 shall be made on a pro rata basis among the holders of Preferred Stock in proportion to the shares of Preferred Stock then held by them. If the funds of the corporation legally available for redemption of shares of Preferred Stock are insufficient to redeem the total number of shares to be redeemed on the Redemption Date, those funds which are legally available will be used to redeem the maximum possible number of shares of Preferred Stock ratably among the holders of such shares. The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the corporation are legally available for the redemption of the remaining shares of Preferred Stock, such funds will immediately be used to redeem the balance of the shares of Preferred Stock which the corporation has become obliged to redeem, but which it has not redeemed.

(f) Within fifteen (15) business days following receipt by the corporation of notice from the holders of the Preferred Stock pursuant to Section B.2(b) hereof, the corporation shall establish the Redemption Date, which shall be not less than ten

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(10), nor more than twenty (20) business days following the later of (i) the date the corporation received such notice pursuant to Section B.2(b) or (ii) the date that the Fair Market Value has been determined if, and only if, the Participating Redemption Price is elected, is to be paid in cash and the holders of a majority of the shares of Preferred Stock have not elected to receive the Cash Redemption Right in lieu thereof. The corporation shall provide written notification by mail, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given pursuant to Section B.2(b)) of Preferred Stock to be redeemed, at the address last shown on the records of the corporation for such holder, (i) notifying such holder of the redemption to be effected, (ii) specifying the number of shares to be redeemed from such holder, the Redemption Date (which shall be not less than ten (10) business days, nor more than twenty (20) business days, following the date of such notice), the consideration to be paid therefor and the place at which payment may be obtained, and (iii) calling upon such holder to surrender to the corporation, in the manner and at the place designated, the certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). If an Event of Default (as hereinafter defined) shall occur, then the corporation shall establish a default redemption date and provide holders of the Preferred Stock with a Redemption Notice at least ten (10) business days prior to any redemption and otherwise provide notice in accordance with this Section B.2(f) as it relates to the default redemption date.

(g) On or prior to the Redemption Date, the corporation shall deposit sufficient funds to pay the redemption amount pursuant to the Cash Redemption Right or the Participating Redemption Right, as set forth in Section B.2(a) hereof for all shares of Preferred Stock designated for redemption in the Redemption Notice and not yet redeemed with a bank or trust corporation having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to pay such redemption amount for such shares to their respective holders on or after the Redemption Date upon receipt of notification from the corporation that such holder has surrendered such holder's share certificate to the corporation pursuant to Section B.2(f) hereof. As of the Redemption Date, the deposit shall constitute full payment of the shares to their holders, and from and after the Redemption Date, the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to such shares and shall have no rights with respect thereto except the rights to receive from the bank or trust corporation payment of the redemption price of the shares, without further interest, upon surrender of their certificates therefor. Such instructions shall also provide that any moneys deposited by the corporation pursuant to this Section B.2(g) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section B.5(a)(i) hereof prior to the Redemption Date shall be returned to the corporation promptly upon such

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conversion. The balance of any moneys deposited by the corporation pursuant to this Section B.2(g) remaining unclaimed at the expiration of six (6) months following the Redemption Date shall thereafter be returned to the corporation upon its request expressed in a resolution of its board of directors.

(h) So long as any shares of Preferred Stock remain outstanding, in the event the corporation fails to redeem shares of Preferred Stock as required pursuant to Section B.2 hereof by no later than the Redemption Date (an "Event of Default"), then notwithstanding anything to the contrary in this Certificate of Incorporation, the amount that the holders of Preferred Stock are entitled to receive otherwise pursuant to Section B.2 hereof shall be increased such that the annualized rate of return for the shares of Preferred Stock remaining outstanding shall be equal to a per annum rate of interest equal to Citibank, N.A.'s prime rate of interest plus five percent (5%) for a thirty (30) day period following the Redemption Date, with such rate of interest increasing by 1/2% in each subsequent thirty (30) day period that the Preferred Stock remains outstanding; provided, however, that the maximum rate of interest shall not exceed twenty-five percent (25%) per annum.

### 3. Voting Rights.

(a) General. Except as otherwise required by law or as otherwise set forth herein, each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could be converted immediately after the close of business on the record date fixed for any annual or special meeting of stockholders or the effective date of any written consent, and shall have voting rights and powers equal to the voting rights and powers of the holders of Common Stock. The holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the by-laws of the corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

#### (b) Board of Directors.

(i) At all times prior to the occurrence of a Qualified IPO (as hereinafter defined), the board of directors of the corporation shall consist of seven (7) members. The holders of Preferred Stock, as a class, shall be entitled to elect two (2) members of the board of directors. So long as any of the Preferred Stock is outstanding, the holders of Common Stock, as a class, shall be entitled to elect five (5) members of the board of directors.

(ii) For purposes of this Section, the following terms shall have the

following definitions:

(A) "Fully Diluted Common Stock" shall mean the total number of shares of Common Stock outstanding after taking into account the following: (w) all outstanding shares of Common Stock; (x) all shares of Common Stock issuable upon conversion of Preferred Stock; (y) all shares of Common Stock reserved for issuance pursuant to the corporation's employee stock option plan; and (z) any stock splits, stock dividends, reclassifications, combinations or similar events ("Stock Adjustments"); provided, however, that Fully Diluted Common Stock shall not include shares of Common Stock or securities convertible into, exchangeable with or immediately exercisable for Common Stock where (1) such shares or securities are issued in connection with any acquisition by, or business combination involving, the corporation, which transaction is determined by the board of directors of the corporation to be on terms which are fair and equitable to the corporation and its stockholders and approved in good faith by the board of directors of the corporation, or (2) holders of a majority of Preferred Stock have not exercised their rights of first refusal with respect to the issuance of such shares or securities pursuant to applicable agreements.

(B) "Qualified IPO" shall mean a firm commitment, underwritten public offering of Common Stock effected by means of a registration statement, filed with the Securities and Exchange Commission by the corporation under the Securities Act of 1933, as amended, where both of the following conditions are satisfied:

(x) the offering results in 20% or more of the Fully Diluted Common Stock, calculated without regard to Common Stock issued pursuant to the corporation's employee stock option plan, being owned of record and beneficially by Persons who are not Affiliates of the corporation and available for trading by public investors; and

(y) the Qualified IPO Minimum Ratio (as hereinafter defined) equals or exceeds:

(1) One and Three-Quarters (1.75), if the offering occurs on or before December 31, 1997;

(2) Two (2.0), if the offering occurs after December 31, 1997, but on or before December 31,

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1998; and

(3) Two and One-Half (2.5), if the offering occurs after December 31, 1998, but on or before December 31, 1999.

(C) "Qualified IPO Minimum Ratio" shall mean a fraction (x) the numerator of which is the price to the public per share of Common Stock sold in the Qualified IPO, and (y) the denominator of which shall be the quotient of (1) Twelve Million Dollars (\$12,000,000), divided by (2) the total number of shares of Common Stock issued or issuable upon conversion of such Preferred Stock, as adjusted for stock splits, stock dividends, recapitalization, share repurchases, combinations or similar events with respect to such shares of Common Stock and Preferred Stock.

(D) "Affiliate" of any Person shall mean a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person and any member of the "immediate family" of such Affiliate. Members of a Person's "immediate family" shall mean and include only such Person's spouse, children, grandchildren and parents, "children" shall include any adopted child of such Person and "grandchildren" shall include any child adopted by a child of such Person.

(iii) In the case of any vacancy in the office of a director occurring among the directors elected by the holders of Preferred Stock pursuant to the second sentence of Section B.3(b)(i) hereof, the remaining director so elected by the holders of Preferred Stock may, by affirmative vote of the remaining director so elected if there is but one, or if there is no such director remaining, by the affirmative vote of the holders of a majority of the shares of Preferred Stock, as a class, elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of (A) Preferred Stock, (B) Common Stock or (C) any director so elected as provided in the preceding sentence hereof, may be removed during the aforesaid term of office, whether with or without cause, only by the affirmative vote of the holders of a majority of Preferred Stock or Common Stock, as the case may be, electing such director.

(c) Change of Control. Any attempts to effectuate a "change of control" of the corporation on or prior to December 31, 1999 shall require the approval of the holders of a majority of the issued and outstanding Preferred Stock; provided, however, that no such approval is required if, and only if, (i) the change in control is effected pursuant to the sale of all, and not less than all, Common Stock outstanding held of record or beneficially

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by Kenneth Tuchman and/or his Affiliates at the time of sale (other than shares of Common Stock issued or issuable pursuant to an employee stock option plan), and (ii) such sale shall be effected in accordance with all applicable agreements, if any, by and among holders of Common Stock and Preferred Stock. For purposes of this Section B.3(c), "change of control" shall mean (A) any sale or transfer or series of sales or transfers of Common Stock, Preferred Stock or any other equity securities of the corporation which result in any Person or group of Affiliated Persons (other than Kenneth Tuchman, the holders of a majority of the Preferred Stock and/or certain of their Affiliates) having a majority voting interest in the corporation or owning more than 50% of the aggregate Common Stock, Preferred Stock, Common Stock issuable upon conversion of Preferred Stock and other capital stock of the corporation outstanding at the time of such sales or transfers or series of sales or transfers, (B) a sale or transfer of all or substantially all of the operating assets of the corporation or any of its subsidiaries to any Person other than a wholly-owned subsidiary of the corporation, or (C) a merger or consolidation involving the corporation and resulting in a 25% or greater reduction in the aggregate percentage equity interest of Kenneth Tuchman and/or certain of his Affiliates, if any, in the corporation or the surviving entity, as the case may be, immediately after consummation of such transaction, as compared to the aggregate percentage equity interest of Kenneth Tuchman, and such certain Affiliates, if any, in the corporation prior to the consummation of such transaction. "Person" shall mean an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

4. Dividends. In the event any cash dividend or other distribution payable in cash or other property is declared on Common Stock, each holder of shares of Preferred Stock on the record date for such dividend or distribution shall be entitled to receive on the date of payment or distribution of such dividend or other distributions, the amount per share of cash or property equal to the cash or property which would be received by the holders of the number of shares of Common Stock into which such shares of Preferred Stock could be converted pursuant to Section B.5(a)(i) hereof immediately prior to such record date.

5. Conversion Rights.

(a) Right to Convert.

(i) Optional Conversion. Each share of Preferred Stock will be convertible, at the option of the holder thereof, at the office of the corporation or any transfer agent for such stock, into Common Stock at any time after the date of issuance of such shares and prior to the close of business on the business day prior to the Redemption Date, respectively. Subject to adjustment as set forth below, Preferred Stock shall be convertible into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$6.45 by the

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Conversion Price, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The price at which shares of Common Stock shall be deliverable upon conversion of shares of Preferred Stock (the "Conversion Price") shall initially be \$6.45 per share of Common Stock. Such initial Conversion Price shall be adjusted as hereinafter provided.

(ii) Mandatory Conversion. Each share of Preferred Stock will be automatically converted into shares of Common Stock at the then effective Conversion Price, (A) immediately upon the consummation of a Qualified IPO and (B) on the next business day immediately following the expiration of the Redemption Period (i.e., the 121st day) pursuant to Section B.2(c) in the event that the holders of Preferred Stock do not elect to exercise the Cash Redemption Right or to accept cash in connection with the Participating Redemption Right.

(b) Mechanics of Conversion. Before any holder of Preferred Stock will be entitled to convert such shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the corporation (or at such other place as the corporation may designate in a written notice sent to the holder by first-class mail, postage prepaid, at its address shown on the books of the corporation), and give written notice to the corporation stating the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The corporation, as soon as practicable thereafter, will issue and deliver at such office to such holder of Preferred Stock or to such holder's nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which such holder is entitled. In the event of an optional conversion pursuant to Section B.5(a)(i) hereof, such conversion will be deemed to have been made immediately prior to the close of business on the date when the corporation receives a holder's certificate or certificates for Preferred Stock and any other documents or instruments required hereunder or by applicable law, and the person or persons entitled to receive the shares of Common Stock issuable upon conversion will be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. In the event of a mandatory conversion pursuant to Section B.5(a)(ii)(A) hereof, the conversion shall be conditioned upon the consummation of the sale of securities and the closing with the underwriters in a Qualified IPO, in which event the Person or Persons entitled to receive Common Stock upon conversion of Preferred Stock shall not be deemed to have converted such stock until immediately prior to the closing of such sale of securities.

(c) Adjustment to Conversion Prices for Certain Diluting Issues.

(i) Special Definitions. For purposes of this Section B.5(c), the following definitions apply:

(1) "Options" shall mean rights, options, or warrants to subscribe

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for, purchase or otherwise acquire either Common Stock or Convertible Securities (as hereinafter defined other than options held by employees and issued pursuant to (A) an employee stock option plan adopted by the corporation and approved by the corporation's board of directors, or (B) an employment agreement with a key employee designated as such by a resolution of the corporation's board of directors, such board of directors acting in good faith).

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

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

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section B.5(c)(iii), deemed to be issued) by the corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(A) upon conversion of shares of Preferred Stock;

(B) to officers, directors or employees of, or consultants to, the corporation pursuant to the corporation's stock option or stock purchase plans or agreements on terms approved by the board of directors, subject to Stock Adjustments;

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

(D) for which adjustment of the Conversion Price is made pursuant to Section B.5(c).

(E) in connection with a transaction that is determined by the corporation's board of directors to be on terms which are fair and equitable to the corporation and its stockholders, has been approved in good faith by the corporation's board of directors, does not involve a Change of Control and:

(1) is effected to attract key employees for the corporation or its subsidiaries;

(2) consists of an acquisition by, or business combination involving, the corporation; or

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(3) consists of the issuance of Common Stock to a corporation or other business entity for a strategic business purpose in connection with a business relationship and interest with the corporation for a consideration (including, without limitation, aggregate sales revenue) of at least \$6,000,000.

(ii) No Adjustment of Conversion Prices. Notwithstanding any provision herein to the contrary, except as otherwise provided in Section B.2(h) hereof, no adjustment in the Conversion Price, respectively, shall be made unless the consideration per share (determined pursuant to Section B.5(c)(iv) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the corporation is less than the Conversion Price for the Preferred Stock in effect on the date of, and immediately prior to, such issue.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event 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 then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such 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:

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

(2) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the corporation, or decrease or increase 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

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Increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the Conversion Price shall affect Common Stock previously issued upon conversion of Preferred Stock);

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

(A) In the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by 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

(B) In the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the corporation (determined pursuant to Section B.5(c)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(4) No readjustment pursuant to Section B.5(c)(iii)(2) or (3) hereof shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (a) the Conversion Price on the original adjustment date, or (b) 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

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(5) 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, whereupon such adjustment shall be made in the same manner provided in Section B.5(c)(iii)(3) hereof.

(iv) Adjustment of Conversion Prices upon Issuance of Additional Shares of Common Stock. In the event the corporation, at any time after the Original Issue Date, shall be deemed to issue Additional Shares of Common Stock pursuant to Section B.5(c) without consideration or for a consideration per share less than the Conversion Price, immediately prior to such issue, then and in such event, the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such deemed issue plus the number of shares of Common Stock which the aggregate consideration received by the corporation for the total number of Additional Shares of Common Stock deemed to be issued pursuant to Section B.5(c) hereof would purchase at such Conversion Price in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock deemed issued pursuant to Section B.5(c). For purposes of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated on a fully diluted basis, as if all shares of Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock immediately prior to such issuance (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date, but not including in such calculation any additional shares of Common Stock issuable with respect to shares of Preferred Stock, Convertible Securities, or outstanding Options, solely as a result of the adjustment of the Conversion Price resulting from the deemed issuance of Additional Shares of Common Stock pursuant to Section B.5(c) causing such adjustment.

(v) Determination of Consideration. For purposes of Section B.6(c), 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 excluding amounts paid or payable for accrued interest or accrued dividends;

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(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 B.5(c)(iii), relating to Options and Convertible Securities shall be determined by dividing:

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

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

(d) Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that the corporation at any time or from time to time after the Original Issue Date shall declare or pay, without consideration, any dividend on Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then Conversion Price in effect immediately

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prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that the corporation shall declare or pay, without consideration, any dividend on Common Stock payable in any right to acquire Common Stock for no consideration, then the corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

(e) Adjustments for Reclassification and Reorganization. If Common Stock issuable upon conversion of Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Section B.5(d) hereof or a merger or other reorganization referred to in Section B.1(b) hereof), the Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of Preferred Stock immediately before such change or cash or other property in respect thereof.

(f) No Impairment. The corporation will not, by amendment of this 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 B.5 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 Preferred Stock against impairment.

(g) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section B.5, 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 Stock a certificate executed by the corporation's chief operating and financial officers and independent certified public accountants 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 Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) 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 Stock.

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(h) Notices of Record Date. In the event that the corporation shall propose at any time: (i) to declare any dividend or distribution upon 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 subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (iii) to effect any reclassification or recapitalization of the outstanding Common Stock involving a change in Common Stock; or (iv) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the corporation shall send to the holders of Preferred Stock:

(1) At least thirty (30) 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, if any, in respect of the matters referred to in (h)(iii) and (h)(iv) above; and

(2) In the case of the matters referred to in (h)(iii) and (h)(iv) above, at least thirty (30) 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 notice referred to in subparagraphs (1) and (2) above shall set forth in detail all material terms of the event or action proposed to be taken by the corporation, any adjustment to the Conversion Price resulting from or required as a result of such event or action and the calculations upon which such adjustment is based.

(i) Issue Taxes. The corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of Preferred Stock pursuant hereto; provided, however, that the corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(j) Reservation of Stock Issuable upon Conversion. The corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock the full number of shares of Common Stock deliverable (i) under the corporation's employee stock option plan and (ii) upon conversion of all of the then outstanding Preferred Stock. The corporation shall, at its own expense, take all such actions and obtain all permits and orders as may be necessary to enable the corporation lawfully to issue Common Stock upon the conversion of shares of Preferred Stock.

(k) Fractional Shares. No fractional share shall be issued upon the conversion

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of any share or shares of Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the board of directors).

(l) Notices. Any notice required by the provisions of this Section B.5 to be given to the holders of shares of Preferred Stock shall be deemed given if addressed to each holder of record at his address as it appears on the books of the corporation and (i) deposited in the United States mail, postage prepaid, (ii) sent by facsimile transmission, or (iii) delivered by nationally recognized private courier.

6. Amendments to Certificate of Incorporation or By-laws. The corporation shall not amend this Certificate of Incorporation or its By-laws without the approval, by vote or written consent, of the holders of at least a majority of Preferred Stock if such amendment would change any of the rights, preferences or privileges provided for herein for the benefit of any shares of Preferred Stock. Without limiting the generality of the preceding sentence, the corporation will not amend this Certificate of Incorporation or its By-laws without the approval of the holders of at least a majority of Preferred Stock if such amendment would:

(i) Change the relative seniority rights of the holders of such Preferred Stock as to the payment of dividends in relation to the holders of any other capital stock of the corporation;

(ii) Reduce the amount payable to the holders of Preferred Stock upon the voluntary or involuntary liquidation, dissolution, or winding up of the corporation, or change the relative seniority of the liquidation preferences of the holders of such Preferred Stock to the rights upon liquidation of the holders of any other capital stock of the Corporation;

(iii) Reduce the rates of redemption specified in Sections B.2 hereof with respect to Preferred Stock;

(iv) Delay the Redemption Date as provided in Section B.2(a) hereof;

(v) Make Preferred Stock redeemable at the option of the corporation;

or

(vi) Cancel or modify the conversion rights for Preferred Stock provided

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for in Section B.5 hereof.

7. No Reissuance of Preferred Stock.

No share or shares of Preferred Stock acquired by the corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the corporation shall be authorized to issue.

**ARTICLE V**

*By-laws*

In furtherance and not in limitation of the powers conferred by statute, the board of directors shall have the power, both before and after receipt of any payment for any of the corporation's capital stock, to adopt, amend, repeal or otherwise alter the By-laws of the Corporation without any action on the part of the stockholders; provided, however, that the grant of such power to the board of directors shall not divest the stockholders of nor limit their power to adopt, amend, repeal or otherwise alter the By-laws.

**ARTICLE VI**

*Election of Directors*

Elections of directors need not be by written ballot except and to the extent provided in the by-laws of the corporation.

**ARTICLE VII**

*Liability of Directors*

No director shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing sentence, a director shall be liable to the extent provided by applicable law (i) for breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the General Corporation Law of the State of Delaware or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this Article VII shall apply to or have any effect on the liability or alleged liability of any director of the corporation for or with respect to any acts or omission of such director occurring prior to such amendment.

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**ARTICLE VIII**  
**Indemnification**

A. Right to Indemnification - Good Faith. Any person who was or is a party or is threatened to made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprises, shall be indemnified by the corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

B. Right to Indemnification - Adjudication. The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of Delaware or the Court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of Delaware, or such other court shall deem proper.

C. Expenses. To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections A and B of this Article VIII, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

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D. Standard of Conduct. Any indemnification pursuant to Sections A and B of this Article VIII (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in Sections A and B of this Article VIII. Such determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or if such a quorum is not obtainable (or, even if obtainable a quorum of disinterested directors so directs) by independent legal counsel in written opinion, or by the stockholders.

E. Prepayment of Expenses. Expenses (including attorney's fees) incurred by a director, officer, employee or agent of the corporation in defending a civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this Article VIII.

F. Non-Exclusivity of Rights. The indemnification and advancement of expenses provided by this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under statute, provision of this Certificate of Incorporation or the by-laws of the corporation, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

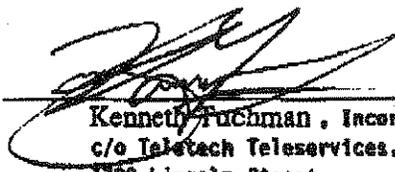
G. Insurance. If available on commercially reasonable terms, the corporation shall purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provision of this Article VIII.

H. Definitions. For the purpose of this Article VIII, all words and phrases used herein shall have the meanings ascribed to them under Section 145 of the General Corporation Law of the State of Delaware.

I. Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

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The undersigned incorporator, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, does make this certificate, hereby declaring and certifying that this is his act and deed and the facts stated herein are true, and accordingly has hereunto set his hand this 21 day of December, 1994.

  
Kenneth Fuchman, Incorporator  
c/o Teletach Teleservices, Inc.  
1700 Lincoln Street  
14th Floor  
Denver, CO 80203