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P. 02

Division of Corporations

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BASIC AMENDMENT
NETBYTEL.COM, INC.

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Amended & Restated
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AMENDED AND RESTATED
ARTICLES OF INCORPORATION
NETBYTEL.COM, INC.

FILED STATE
SECRETARY OF CORPORATIONS
P. DIVISION OF CORPORATIONS
2001 MAY 17 AM 11:40

Pursuant to Section 607.1006 of the Florida Statutes, NetByTel.com, Inc., a Florida profit corporation, certifies that:

The amendments set forth herein were duly recommended by the Board of Directors and approved by a majority of the shareholders on April 16, 2001. The number of votes cast for the amendment was sufficient for approval.

Pursuant to Sections 607.1006 and 607.1007 of the Florida Business Corporation Act, the Articles of Incorporation of NetByTel.com, Inc., a Florida profit corporation (the "Corporation"), are hereby amended and restated in their entirety as follows:

ARTICLE I

Name

The name of the Corporation is NetByTel, Inc.

ARTICLE II

Principal Office

The principal office and mailing address of this Corporation is 1141 South Rogers Circle, Suite 9, Boca Raton, Florida 33487.

ARTICLE III

Purpose

The Corporation is organized for the purpose of transacting any or all lawful business.

ARTICLE IV

Capital Stock

A. Classes of Stock. This Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that this Corporation is authorized to issue is one hundred six million seven hundred nineteen thousand three-hundred seventy-six (106,719,376) shares. Sixty-one million seven hundred nine thousand six hundred twenty-four (61,709,624) shares shall be Common Stock each with a par value of \$0.001 per share. Forty-five million ninety-nine thousand seven hundred fifty-two (45,099,752) shares shall be Preferred Stock, each with a par value of \$0.01 per share.

B. Rights, Preferences and Restrictions of Preferred Stock. The Preferred Stock authorized by these Amended and Restated Articles of Incorporation may be issued from time to time in one or more series. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock, which series shall consist of 5,902,831 shares (the "Series A Preferred Stock"), the Series B Preferred Stock, which series shall consist of 3,388,913 shares (the "Series B Preferred Stock") and the Series C Preferred Stock, which series shall

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consist of 35,718,008 shares (the "Series C Preferred Stock"), are as set forth below in this Article IV(B). Except as otherwise provided herein, the Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon additional series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or of any of them. Subject to compliance with applicable protective voting rights that have been or may be granted to the Preferred Stock or series thereof in Certificates of Designation or this Corporation's Articles of Incorporation ("Protective Provisions"), but notwithstanding any other rights of the Preferred Stock or any series thereof, the rights, privileges, preferences and restrictions of any such additional series may be subordinated to, pari passu with (including, without limitation, inclusion in provisions with respect to liquidation and acquisition preferences, redemption and/or approval of matters by vote or written consent), or senior to any of those of any present or future class or series of Preferred or Common Stock. Subject to compliance with applicable Protective Provisions, the Board of Directors is also authorized to increase or decrease the number of shares of any series (other than the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock) prior or subsequent to the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

1. *Dividend Provisions.*

(a) The holders of shares of Series A Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this Corporation) on the Series B Preferred Stock and on the Common Stock of this Corporation, at the rate of \$0.24 per share per annum through and including May 12, 2001 and thereafter at the rate of \$0.096 per share per annum for the Series A Preferred Stock (as adjusted for any stock splits, stock dividends, recapitalizations or the like). Such dividends shall be cumulative and shall accrue on a daily basis. The holders of the outstanding Series A Preferred Stock may waive any dividend preference that such holders shall be entitled to receive under this Section 1 upon the affirmative vote or written consent of the holders of at least a majority of the Series A Preferred Stock then outstanding acting together as a single class.

(b) The holders of the shares of Series C Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefore, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this Corporation) on the Series B Preferred Stock and on the Common Stock of this Corporation at the rate of \$0.0429 per share per annum for the Series C Preferred Stock (as adjusted for stock splits, stock dividends, recapitalizations or the like). Such dividends shall be cumulative and shall accrue on a daily basis. The holders of the outstanding Series C Preferred Stock may waive any dividend

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preference as such holder shall be entitled to receive under this Section 1 upon the affirmative vote or written consent of the holders of at least sixty percent (60%) of the Series C Preferred Stock then outstanding acting together as a single class.

(c) Dividends payable to holders of Series A Preferred Stock pursuant to Section 1(a) and to holders of Series C Preferred Stock pursuant to Section 1(b) shall be payable on a pari passu basis and shall be distributed to the holders of Series A Preferred Stock and to the holders of Series C Preferred Stock in proportion to the aggregate amount of accrued and unpaid dividends due to the holders of each respective series of Preferred Stock under Section 1(a) and 1(b).

(d) The holders of shares of Series B Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, pari passu with the holders of the Common Stock of this Corporation, which dividends shall be payable when, as, and if declared by the Board of Directors.

(e) The holders of Series C Preferred Stock shall also be entitled to receive dividends, out of any assets legally available therefor, pari passu with the holders of Common Stock of this Corporation, which dividends shall be payable when, as, and if declared by the Board of Directors.

2. *Liquidation Preference.*

(a) In the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary, First, the holders of the Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of the Series A Preferred Stock, Series B Preferred Stock or Common Stock by reason of their ownership thereof, an amount per share equal to the sum of \$.5358 for each outstanding share of Series C Preferred Stock (as adjusted for any stock splits, stock dividends, recapitalizations or the like (the "Original Series C Issue Price")); Second, the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of the Common Stock by reason of their ownership thereof, an amount per share equal to the sum of \$1.20 for each outstanding share of Series A Preferred Stock (as adjusted for any stock splits, stock dividends, recapitalizations or the like (the "Original Series A Issue Price")) and the holders of the Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of the Common Stock by reason of their ownership thereof, an amount per share equal to the sum of \$1.20 for each outstanding share of Series B Preferred Stock (as adjusted for any stock splits, stock dividends, recapitalizations or the like (the "Original Series B Issue Price")); Third, the holders of the Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of the Common Stock by reason of their ownership thereof, an amount per share equal to Original Series C Issue Price; Fourth, the holders of Series C Preferred Stock and Series A Preferred Stock shall receive an amount equal to any accrued but unpaid dividends on a pari passu basis.

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(b) Upon completion of the distribution required by Section 2(a), assets of this Corporation remaining available for distribution to shareholders shall be distributed among the holders of Common Stock and the holders of Series C Preferred Stock pro rata based on the number of shares of Common Stock held or deemed held by each holder assuming the shares of Series C Preferred Stock were converted into shares of Common Stock immediately prior to such event (until the holders of the Series C Preferred Stock shall have received an aggregate cumulative amount under Section 2(a) and this Section 2(b) equal to three (3) times the Original Series C Issue Price plus any accrued, yet unpaid dividends).

(c) Upon completion of the distributions required by Section 2(a) and Section 2(b), all of the remaining assets of this Corporation available for distribution to shareholders shall be distributed among the holders of Common Stock pro rata based on the number of shares of Common Stock held by each.

(d) (i) Unless the holders of at least a majority of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock then outstanding shall determine otherwise, the following events shall be deemed to be and treated as a liquidation, dissolution, or winding up of the Corporation with the proceeds or securities to be distributed in accordance with Section 2(a), 2(b) and 2(c): (x) the acquisition of this Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) that results in the transfer of fifty percent (50%) or more of the outstanding voting power of this Corporation; except, that, the initial sale by the Corporation of the Series C Preferred Stock shall not be deemed to be a liquidation, dissolution or winding up of this Corporation pursuant to this paragraph; or (y) a sale of all or substantially all of the assets of this Corporation.

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

A) cause such closing to be postponed until such time as the requirements of Section 2(d) and Section 2(e) have been complied with; or

B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Subsection 2(d)(iii).

(iii) This Corporation shall give each holder of record of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock written notice of any impending transaction described in Section 2(d) not later than twenty (20) days prior to the shareholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such

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transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and this Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after this Corporation has given the first notice provided for herein or sooner than ten (10) days after this Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock.

(e) For purposes of this Section 2, any securities shall be valued as follows:

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

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

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

(iv) The method of valuation of securities not registered under the federal securities laws or that are subject to transfer restrictions (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (i), (ii), or (iii) to reflect the approximate fair market value thereof, as determined unanimously by the Board of Directors of this Corporation.

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3. *Redemption*

(a) The Company shall be obligated to redeem the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock as follows:

(i) The holders of at least sixty percent (60%) of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, each series voting as a separate class, may require the Company, to the extent it may lawfully do so, to redeem the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock on the fifth (5th) anniversary of the Series C Purchase Date (the "Redemption Date"); *provided* that the Company shall receive at least sixty (60) days prior written notice of such request. The Company shall effect such redemption on the Redemption Date by paying in cash in exchange for the shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, to be redeemed an amount equal to Original Issue Price per share of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) plus accrued and unpaid dividends with respect to such shares in three equal installments to occur (i) six months following the Redemption Date, (ii) twelve months following the Redemption Date, and (iii) eighteen months following the Redemption Date. The total amount to be paid for the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock is hereinafter referred to as the "Redemption Price." The Company shall be required to redeem on the Redemption Date all outstanding shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock.

(ii) At least thirty (30) days but no more than sixty (60) days prior to the Redemption Date, the Company shall send a notice (a "Redemption Notice") to all holders of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, setting forth (A) the Redemption Price for the shares to be redeemed; and (B) the place at which such holders may obtain payment of the Redemption Price upon surrender of their share certificates. If the Company does not have sufficient funds legally available to redeem all shares to be redeemed at the Redemption Date, then it shall redeem such shares pro rata (based on the portion of the aggregate Redemption Price payable to them) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(b) On or prior to the Redemption Date, the Company shall deposit one third of the Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000 (the "Bank"), as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, six (6) months after the Redemption Date, one-third

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(1/3) of the Redemption Price of the shares to their respective holders upon the surrender of their share certificates. One-third (1/3) of the Redemption Price shall be deposited with the Bank twelve (12) months after the Redemption Date with irrevocable instructions to pay such funds upon receipt to the respective holders and one third of the Redemption Price shall be deposited with the Bank eighteen (18) months after the Redemption Date with irrevocable instructions to pay such funds upon receipt to the respective holders. Any monies deposited by the Company pursuant to this Section 3(b) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section 4 hereof no later than the fifth (5th) day preceding the Redemption Date shall be returned to the Company forthwith upon such conversion. The balance of any funds deposited by the Company pursuant to this Section 3(b) remaining unclaimed at the expiration of one (1) year following their deposit shall be returned to the Company promptly upon its written request.

(c) On or after the Redemption Date, each holder of shares of Series C Preferred Stock to be redeemed shall surrender such holder's certificates representing such shares to the Company in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Company is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as holder of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, (except the right to receive the Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares upon receipt of the Redemption Price therefore; *provided* that in the event that shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock are not redeemed due to a default in payment by the Company or because the Company does not have sufficient legally available funds, such shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

(d) In the event of a call for redemption of the shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, the conversion rights (as delineated in Section 4) for the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock shall terminate at the close of business on the fifth (5th) day preceding the first one third payment, unless default is made in payment of the Redemption Price.

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

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(a) *Right to Convert.*

(i) Each share of Series A Preferred Stock shall be convertible in whole or in part, at the option of the holder thereof, at any time and from time to time after the date of issuance of such share, at the office of this Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series A Issue Price by the conversion price for the Series A Preferred Stock (the "Series A Conversion Price") per share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Series A Conversion Price shall be \$0.72 per share; provided, however, that the Series A Conversion Price shall be subject to adjustment as set forth in subsection 4(d).

(ii) Each share of Series B Preferred Stock shall be convertible in whole or in part, at the option of the holder thereof, at any time and from time to time after the date of issuance of such share, at the office of this Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series B Issue Price by the conversion price for the Series B Preferred Stock (the "Series B Conversion Price") per share, determined as hereafter provided. The Series B Conversion Price shall be the Original Series B Issue Price.

(iii) Each share of Series C Preferred Stock shall be convertible in whole or in part, at the option of the holder thereof, at any time and from time to time after the date of issuance of such stock, at the office of this Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series C Issue Price by the Conversion Price for the Series C Preferred Stock (the "Series C Conversion Price" and together with the Series A Conversion Price and Series B Conversion Price, the "Conversion Price") per share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Series C Conversion Price shall be the Original Series C Issue Price; provided, however, that the Series C Conversion Price shall be subject to adjustment as set forth in subsection 4(d).

(b) *Automatic Conversion.* Each share of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Price immediately upon the earlier of (i) this Corporation's sale of its Common Stock in a public offering pursuant to a registration statement on Form S-1 or Form SB-2 under the Securities Act of 1933, as amended, with aggregate proceeds to the Company and/or selling stockholders (before underwriters' discounts and expenses relating to the offering, including without limitation fees of the Company's counsel) which equal or exceed \$25,000,000, and at a price per share equivalent to a total market valuation of this Corporation

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of at least \$75,000,000, or (ii) as to each separate series on the date specified by written consent or agreement of the holders of at least two thirds of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, respectively.

(c) *Mechanics of Conversion.*

(i) Before any holder of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock shall be entitled to voluntarily convert the same into shares of Common Stock, he, she or it shall surrender the certificate or certificates therefor, duly endorsed, at the office of this Corporation or of any transfer agent for the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, respectively, and shall give written notice to this Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as applicable, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Any voluntary conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, the conversion may, at the option of any holder tendering Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall not be deemed to have converted such Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock until immediately prior to the closing of such sale of securities.

(ii) Upon any voluntary or automatic conversion of shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock into shares of Common Stock, all accrued and unpaid dividends relating to such converted shares shall be forfeited and cancelled.

(d) *Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances Splits and Combinations.* The Series A Conversion Price and

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the Series C Conversion Price shall be subject to adjustment from time to time as follows:

(i) A) 1) If this Corporation shall issue any Additional Stock (as defined below), the Series C Conversion Price in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price equal to the quotient obtained by dividing the total computed under clause (a) below by the total computed under clause (b) below as follows:

a) an amount equal to the sum of:

i) the aggregate purchase price of the shares of Series C Preferred Stock sold pursuant to the Securities Purchase Agreement (whether at the initial or subsequent closings) dated as of the Original Series C Issue Date between this Corporation and the investors set forth therein (the "Series C Preferred Stock Purchase Agreement"), plus

ii) the aggregate consideration, if any, received by the Corporation for all Additional Stock issued on or after the date of the Series C Preferred Stock Purchase Agreement (the "Series C Purchase Date");

b) an amount equal to the sum of:

i) the aggregate purchase price of the shares of Series C Preferred Stock sold pursuant to the Series C Preferred Stock Purchase Agreement divided by the Series C Conversion Price in effect at the Series C Purchase Date (or such higher or lower Series C Conversion Price as results from the application of subsections 4(d)(iii) and (iv) and assuming that this Amended and Restated Articles of Incorporation was in effect as of the Series C Purchase Date), plus

ii) the number of shares of Additional Stock issued since the Series C Purchase Date (increased or decreased to the extent that the number of such shares of Additional Stock shall have been increased

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or decreased as the result of the application of subsections 4(d) (iii) and (iv)).

2) If this Corporation shall issue any Additional Stock (as defined below) on or after the date of the Series C Stock Purchase Agreement without consideration or for a consideration per share (computed on an as-converted to Common Stock basis) less than the Original Series C Issue Price, the Series A Conversion Price in effect immediately prior to each such issuance shall forthwith be adjusted to a price equal to the difference obtained by subtracting the change in the Series C Conversion Price (obtained by subtracting the new Series C Conversion Price derived under section 4(d)(i)(A)(1) above as a result of such issuance from the Series C Conversion Price in effect immediately prior to the issuance of such Additional Stock) from the Series A Conversion Price in effect immediately prior to such issuance of Additional Stock.

B) No adjustment of the applicable Conversion Price shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of that event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections (E)(3) and (E)(4), no adjustment of such applicable Conversion Price pursuant to this subsection 4(d)(i) shall have the effect of increasing the applicable Conversion Price above the applicable Conversion Price in effect immediately prior to such adjustment.

C) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by this Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

D) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in the good faith judgment of the Board of Directors irrespective of any accounting treatment.

E) In the case of the issuance (whether before, on or after the applicable Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or

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exchangeable securities, the following provisions shall apply for all purposes of this subsection 4(d)(i) and subsection 4(d)(ii):

1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D)), if any, received by this Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by this Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by this Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 4(d)(i)(C) and 4(d)(i)(D)).

3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof (unless such options or rights or

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convertible or exchangeable securities were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 4(d)(i)(A)), the applicable Conversion Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the applicable Conversion Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities (unless such options or rights were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 4(d)(i)(A)), shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 4(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 4(d)(i)(E)(3) or (4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 4(d)(i)(E)) by this Corporation after the date of filing of these Amended and Restated Articles of Incorporation other than:

A) Common Stock issued pursuant to a transaction described in subsection 4(d)(iii) hereof;

B) Shares of Common Stock issuable or issued to employees, consultants, directors or vendors (if in transactions with primarily non-financing purposes) of this Corporation directly or pursuant to a stock option plan or

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restricted stock plan approved by the Board of Directors of this Corporation (an aggregate of ~~4,800,000~~ 7,533,500 shares of Common Stock as of the date hereof, including ~~1,710,708~~ 2,906,274 which are issued and outstanding);

C) Series A Preferred Stock issued upon exercise of Series A Warrants;

D) Series B Preferred Stock issued upon exercise of Series B Warrants;

E) Common Stock issued upon the conversion of the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock.

(iii) In the event this Corporation should at any time or from time to time after the date of filing of these Amended and Restated Articles of Incorporation fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the applicable Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in subsection 4(d)(i)(E).

(iv) If the number of shares of Common Stock outstanding at any time after the date of filing of these Amended and Restated Articles of Incorporation is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the applicable Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

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(e) *Other Distributions.* In the event this Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 4(d)(iii), then, in each such case for the purpose of this subsection 4(e), the holders of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this Corporation into which their shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of this Corporation entitled to receive such distribution.

(f) *Recapitalizations.* If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or Section 2) provision shall be made so that the holders of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) *No Impairment.* This Corporation will not, by amendment of its Amended and Restated Articles of Incorporation or through any reorganization, recapitalization, 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 this Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock against impairment.

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(h) *No Fractional Shares and Certificate as to Adjustments.*

(i) No fractional shares shall be issued upon the conversion of any share or shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share.

(ii) Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price or Series C Conversion Price pursuant to this Section 4, this 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 Series A Preferred Stock or Series C Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock or Series C Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the applicable Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of Series A Preferred Stock or Series C Preferred Stock, as the case may be.

(i) *Notices of Record Date.* In the event of any taking by this Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this Corporation shall mail to each holder of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(i) *Reservation of Stock Issuable Upon Conversion.* This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock; and if at any time

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the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these Amended and Restated Articles of Incorporation.

(k) *Notices.* Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of this Corporation.

5. Voting Rights.

The holder of each share of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall have the right to one vote for each share of Common Stock into which such Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the bylaws of this Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

6. Protective Provisions.

(a) So long as at least ten percent (10%) of the authorized shares of any of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of each such series, each voting as a separate class:

(i) amend, repeal, alter or change any provisions of the Company's Articles of Incorporation or Bylaws in any manner;

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(ii) increase the authorized number of shares of any class of Preferred Stock;

(iii) take any action which currently requires the consent of the majority of the holders of another class of Preferred Stock.

(b) So long as at least ten percent (10%) of the authorized shares of the Series A Preferred Stock, Series B Preferred Stock and/or Series C Preferred Stock remains outstanding, consent of the holders of at least eighty percent (80%) of the outstanding shares of each such series (in the case of corporate action referred to in paragraphs (i), (ii) and (iii) below) and the applicable series (in the case of corporate action referred to in paragraphs (iv), (v) and (vi) below) each voting as a separate class, shall be required before the Corporation may:

(i) liquidate, sell, convey, or otherwise dispose of all or substantially all of the Company's property or business or merge into or consolidate with any other corporation or other entity or effect any transaction or series of related transactions in which more than 50% of the Company's voting power is disposed of or effect any reorganization or recapitalization; or

(ii) redeem, purchase, or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of the Company's Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to (a) repurchase of Common Stock from employees, officers, directors, consultants or other persons performing services for the Company or any subsidiary pursuant to agreements under which the Company has the option to repurchase such shares at cost or upon the occurrence of certain events such as termination of employment; or (b) obligations to repurchase Common Stock that existed prior to November 12, 1999;

(iii) declare or pay dividends on the capital stock of the Company;

(iv) alter or change the rights, preferences or privileges of any series of Preferred Stock so as to adversely affect such series' shares;

(v) increase or decrease the authorized number of shares of any series of Preferred Stock; or

(vi) issue any series of Preferred Stock at less than the original series issue price other than the 604,167 shares of Series B Preferred Stock issued to T.T-Telematic Venture.

(c) So long as at least ten percent (10%) of the authorized shares of Series A Preferred Stock, Series B Preferred Stock and/or Series C Preferred Stock shall remain outstanding, this Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of at least sixty-six and two thirds percent (66 2/3%) of the members of this Corporation's Board of Directors:

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(i) incur new indebtedness in excess of \$100,000 in the aggregate unless modified by sixty-six and two-thirds percent (66 2/3%) of the members of the Corporation's Board of Directors; or

(ii) enter into any contract or agreement with a value in excess of \$50,000, other than contracts entered into in the ordinary course of business.

(iii) authorize or issue any new class or series of capital stock having rights, preferences or privileges senior to or on a parity with the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock with respect to dividend rights, redemption rights, voting or liquidation preferences;

7. *Status of Converted Stock.* In the event any shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be converted pursuant to Section 4 hereof, the shares of Preferred Stock so converted shall be canceled and shall not be issuable by this Corporation. The Amended and Restated Articles of Incorporation of this Corporation shall be appropriately amended to effect the corresponding reduction in this Corporation's authorized capital stock.

C. Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Article IV(C).

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

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

3. *Redemption.* The Common Stock is not redeemable.

4. *Voting Rights.* The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of this Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

Indemnification of Officers and Directors

A. Limitation of Liability. To the full extent that the Florida Business Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of the liability of directors or officers, a director or officer of this Corporation shall not be liable to this Corporation or its shareholders for any monetary damages.

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B. Mandatory Indemnification.

1. The Corporation shall, and does hereby, indemnify, to the fullest extent permitted or authorized by current or future legislation or current or future judicial or administrative decisions (but, in the case of any such future legislation or decisions, only to the extent that it permits the Corporation to provide broader indemnification rights than permitted prior to such legislation or decision), each officer and director of the Corporation (including the heirs, executors, administrators and estate of the person) who was or is a party, or is threatened to be made a party, or was or is a witness, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and any appeal therefrom (collectively, a "Proceeding"), against all liability (which for purposes of this Article includes all judgments, settlements, penalties and fines) and costs, charges, and expenses (including attorneys' fees) asserted against him or incurred by him by reason of the fact that the person is or was a director or officer 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 (including serving as a fiduciary of an employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended)).

C. Advance of Costs, Charges and Expenses. Costs, charges and expenses (including attorneys' fees) incurred by a person referred to in Section B(1) of this Article in defending a Proceeding shall be paid by the Corporation to the fullest extent permitted or authorized by current or future legislation or current or future judicial or administrative decisions (but, in the case of any future legislation or decisions, only to the extent that it permits the Corporation to provide broader rights to advance costs, charges and expenses than permitted prior to the legislation or decisions) in advance of the final disposition of the Proceeding. A person to whom costs, charges and expenses are advanced pursuant to this Article shall not be obligated to repay them until the final determination of the pending Proceeding in a court of competent jurisdiction concerning the right of that person to be indemnified. The Board of Directors may, upon approval of the indemnified person, authorize the Corporation's counsel to represent the person in any action, suit or proceeding, whether or not the Corporation is a party to the action, suit or proceeding.

D. Procedure For Indemnification. Any indemnification or advance under this Article shall be made promptly, and in any event within 30 days after delivery of the written request of the director or officer. The right to indemnification or advances as granted by this Article shall be enforceable by the director or officer in any court of competent jurisdiction if the Corporation denies the request under this Article in whole or in part, or if no disposition of the request is made within the 30-day period after delivery of the request. The requesting person's costs and expenses incurred in connection with successfully establishing his right to indemnification, in whole or in part, in any action also shall be indemnified by the Corporation. It shall be a defense available to the Corporation to assert in the action that indemnification is prohibited by law or that the claimant has not met the standard of conduct, if any, required by current or future legislation or by current or future judicial or administrative decisions for indemnification (but, in the case of future legislation or decision, only to the extent that the legislation does not impose a more stringent standard of conduct than permitted prior to the legislation or decisions). The burden of proving this defense shall be on the Corporation. Neither

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the failure of the Corporation to have made a determination (prior to the commencement of the action) that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct, if any, nor the fact that there has been an actual determination by the Corporation that the claimant has not met the applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

E. Survival of Indemnification. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those indemnified may now or hereafter be entitled under any statute, agreement, vote of shareholders or disinterested directors or recommendation of counsel or otherwise, both as to actions in the person's capacity as an officer or director and as to actions in another capacity while still an officer or director, and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the estate, heirs, beneficiaries, executors and administrators of such a person. All rights to indemnification under this Article shall be deemed to be a contract between the Corporation and each director and officer of the Corporation described in Section B of this Article who serves or served as such at any time while this Article is in effect. Any repeal or modification of this Article or any repeal or modification of relevant provisions of the Florida Business Corporation Act or any other applicable laws shall not in any way diminish the rights to indemnification of such director or officer or the obligations of the Corporation arising hereunder for claims relating to matters occurring prior to the repeal or modification. The Board of Directors of the Corporation shall have the authority, by resolution, to provide for indemnification of employees and agents of the Corporation and for such other indemnification of the directors, officers, employees and agents of the Corporation as it deems appropriate.

F. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer 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 (including serving as a fiduciary of an employee benefit plan), against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article or the applicable provisions of the Florida Business Corporation Act.

G. Savings Clause. If this Article or any portion is invalidated or held to be unenforceable on any ground by a court of competent jurisdiction, the Corporation shall nevertheless indemnify each director and officer of the Corporation described in Section B of this Article to the fullest extent permitted by all applicable portions of this Article that have not been invalidated or adjudicated unenforceable, and as permitted by applicable law.

H. Change in Board of Directors. In the event there has been a change in the composition of a majority of the Board of Directors after the date of the alleged act or omission with respect to which indemnification is claimed, any determination as to indemnification and advancement of expenses with respect to any claim for indemnification made pursuant to Article V(B)(1) shall be made by special legal counsel agreed upon by the Board of Directors and the proposed indemnitee. If the Board of Directors and the proposed indemnitee are unable to agree

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upon such special legal counsel, the Board of Directors and the proposed indemnitee each shall select a nominee, and the nominees shall select such special legal counsel.

I. Covered Persons. Reference herein to directors, officers, employees or agents shall include former directors, officers, employees and agents and their respective heirs, executors and administrators.

J. Amendment. Notwithstanding any other provisions of the Amended and Restated Articles of Incorporation or the Bylaws of this Corporation (and notwithstanding the fact that some lesser percentage may be specified by law, the Amended and Restated Articles of Incorporation or the Bylaws of this Corporation), the provisions of this Article V may be altered, amended or repealed only by the affirmative vote of 75% or more of the voting power of all the then outstanding shares of this Corporation's capital stock entitled to vote on the election of directors, voting together as a single class.

ARTICLE VI

Amendment

Subject to Article IV, Section 6, and except as otherwise provided herein, these Amended and Restated Articles of Incorporation may be amended in the manner provided by law. Subject to Article IV, Section 6, both the shareholders and the Board of Directors may repeal, amend or adopt Bylaws for the Corporation, pursuant to these Articles, except that the shareholders may prescribe in any Bylaw made by them that such Bylaw shall not be altered, repealed or amended by the Board of Directors.

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IN WITNESS WHEREOF, the undersigned has executed these Amended and Restated Articles of Incorporation this 17 day of May, 2001.

NETBYTEL.COM, INC.

By: 

Neal A. Bernstein
Chief Executive Officer

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