

Division of Corporations

of 1

P00000051704

Florida Department of State

Division of Corporations

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Katherine Harris, Secretary of State

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BASIC AMENDMENT

ESEMDE, INC.

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Broward Financial Center
500 East Broward Blvd., Ste. 1400
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Phone: 954-462-2000
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DATE: 11.26.01

TO:

FROM: Michelle Ruck

FIRM: Florida Dept. of State

PHONE NO: Ext.

FAX NO.: 850-487-6013 205-0380

E-MAIL

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OF PAGES, INCLUDING COVER 21

MESSAGE:

Changes were made per attached letter.

Please give us the original filing date of November 21st.

Thank you.

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FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State

November 21, 2001

ESEMDE, INC.
4950 COMMUNICATION AVE., STE. 900
BOCA RATON, FL 33343-1

SUBJECT: ESEMDE, INC.
REF: P00000051704

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

According to our records the name of the registered agent should be VALDES-FAULI CORPORATE SERVICES, INC. Please correct.

Article VII states that the number of directors shall consist of not less than three (3) and more than five (5) directors. Only one director is reflected on our records.???

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6901.

Susan Payne
Senior Section Administrator

FAX Aud. #: H01000116279
Letter Number: 101A00062502

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**AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF**

ESEMDE, INC.

1. The name of the Corporation is Esemde, Inc.
2. Set forth below is the text of the Amended and Restated Articles of Incorporation of Esemde, Inc.:

**THIRD AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
ESEMDE, INC.**

Article I

Name

The name of the Corporation is Esemde, Inc.

Article II

Duration

The Corporation shall have a perpetual existence.

Article III

Purpose

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

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Article IV

Address

The principal place of business of this Corporation shall be:

4950 Communication Ave., Suite 900
Boca Raton, Florida 33431

The mailing address of this Corporation shall be:

4950 Communication Ave., Suite 900
Boca Raton, Florida 33431

Article V

Capital Stock

A. Classes of Stock. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is Twenty Million (20,000,000) shares, each with a par value of \$.001 per share. Fifteen Million (15,000,000) shares shall be Common Stock and Five Million (5,000,000) shares shall be Preferred Stock.

B. Rights, Preferences and Restrictions of Preferred Stock. The Preferred Stock authorized by these Articles of Incorporation may be issued from time to time in one or more series.

1. The first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of Three Hundred Thousand (300,000) shares. The second series of Preferred Stock shall be designated "Series B Preferred Stock" and shall consist of Five Hundred Ninety Five Thousand (595,000) shares. The third series of Preferred Stock shall be designated the "Series C Preferred Stock" and shall consist of Two Hundred Eighty Three Thousand Two Hundred Forty Five (283,245) shares. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock, Series B Preferred Stock and the Series C Preferred Stock are as set forth below. The Series A Preferred Stock, the Series B Preferred and the Series C Preferred Stock are referred to collectively as the "Designated Preferred Stock".

a. **Dividend Provisions.** No dividend shall be paid on the Common Stock in any fiscal year so long as any shares of Designated Preferred Stock are outstanding.

Fax Audit # H01000116279 0

-2-

NYK 739950-3.058904.0012

Fax Audit # H01000116279 0

b. Liquidation.

(i) **Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Designated Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, and on terms *pari passu* with all the holders of Designated Preferred Stock (other than the liquidation preference amount per share), an amount per share equal to:

(a) with respect to the Series A Preferred Stock, the greater of (i) \$0.50 (appropriately adjusted to reflect subsequent stock splits, stock dividends, combinations or other recapitalizations) for each share of Series A Preferred Stock then held by them, plus declared but unpaid dividends (appropriately adjusted to reflect subsequent stock splits, stock dividends, combinations or other recapitalizations); and (ii) the amount that each holder of Series A Preferred Stock would receive per share of Series A Preferred Stock if all shares of Designated Preferred Stock were converted to Common Stock immediately prior to the distribution resulting from such liquidation, dissolution or winding up and such distribution were distributed among the holders of the Common Stock *pro rata* based on the number of shares of Common Stock held by each;

(b) with respect to the Series B Preferred Stock, the greater of (i) \$0.84034 (appropriately adjusted to reflect subsequent stock splits, stock dividends, combinations or other recapitalizations) for each share of Series B Preferred Stock then held by them, plus declared but unpaid dividends (appropriately adjusted to reflect subsequent stock splits, stock dividends, combinations or other recapitalizations); and (ii) the amount that each holder of Series B Preferred Stock would receive per share of Series B Preferred Stock if all shares of Designated Preferred Stock were converted to Common Stock immediately prior to the distribution resulting from such liquidation, dissolution or winding up and such distribution were distributed among the holders of the Common Stock *pro rata* based on the number of shares of Common Stock held by each; and

(c) with respect to the Series C Preferred Stock, the greater of (i) \$0.94 (appropriately adjusted to reflect subsequent stock splits, stock dividends, combinations or other recapitalizations) for each share of Series C Preferred Stock then held by them, plus declared but unpaid dividends (appropriately adjusted to reflect subsequent stock splits, stock dividends, combinations or other recapitalizations); and (ii) the amount that each holder of Series C Preferred Stock would receive per share of Series C Preferred Stock if all shares of Designated Preferred Stock were converted to Common Stock immediately prior to the distribution resulting from such liquidation, dissolution or winding up and such distribution were distributed among the holders of the Common Stock *pro rata* based on the number of shares of Common Stock held by each.

In the event that the assets of the Corporation available for distribution are insufficient to cover the aggregate liquidation preference amounts for the Designated Preferred Stock as described in Subsections (a), (b) and (c) above, the distributions to the holders of the Designated Preferred Stock shall be made *pro rata* based upon the liquidation preference for each series of Designated Preferred Stock.

Fax Audit # H01000116279 0

-3-

NYK 739950-3.058904.0012

Fax Audit # H01000116279 0

(ii) Remaining Assets. Upon the completion of the distribution required by Section B.1.b(i) of this Article, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among the holders of the Common Stock and the Designated Preferred Stock (calculated as if all the Designated Preferred Stock had been converted into Common Stock) pro rata based on the number of shares of Common Stock and Designated Preferred Stock (as if converted) held by each.

(iii) Certain Acquisitions.

(a) Deemed Liquidation. For purposes of this Section B.1.b, a liquidation, dissolution or winding up of the Corporation shall be deemed to occur if the Corporation shall sell, convey, or otherwise dispose of all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a wholly-owned subsidiary corporation) or effect any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of, provided, that this Section B.1.b(iii)(a) shall not apply to a merger effected solely for the purpose of changing the domicile of the Corporation.

(b) Valuation of Consideration. In the event of a deemed liquidation as described in Section B.1.b(iii)(a) of this Article, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(1) The method of valuation of securities not subject to an investment letter or other similar restrictions on free marketability:

1. If traded on a securities exchange or The Nasdaq Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day (30) period ending three (3) days prior to the closing of a transaction described in Section B.1.b(iii)(a);
2. If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day (30) period ending three (3) days prior to the closing of a transaction described in Section B.1.b(iii)(a); and
3. If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Designated Preferred Stock, and if not so mutually determined, then the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Designated Preferred Stock will choose an independent third party to determine the appropriate value.

Fax Audit # H01000116279 0

(2) The method of valuation of securities subject to an investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section B.1.b.(iii)(b)(1) of this Article to reflect the approximate fair market value of the securities, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Designated Preferred Stock, and if not so mutually determined, then the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Designated Preferred Stock will choose an independent third party to determine the appropriate value.

(c) **Notice of Transaction.** The Corporation shall give each holder of record of Designated Preferred Stock written notice of such impending transaction not later than fifteen (15) days prior to the stockholders' meeting called to approve such transaction, or fifteen (15) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section B.1.b, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than fifteen (15) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of the Designated 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 the Designated Preferred Stock.

(d) **Effect of Noncompliance.** In the event the requirements of this Section B.1.b.(iii) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Designated 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 Section B.1.b.(iii)(c) of this Article.

c. **Redemption.** Unless otherwise provided for in an agreement between the Corporation and the holders of the Designated Preferred Stock, the Designated Preferred Stock is not redeemable.

d. **Conversion.** The holders of the Designated Preferred Stock shall have conversion rights as follows:

(i) **Right to Convert.** Subject to Section B.1.d.(iii) of this Article, each share of

(a) Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and

Fax Audit # H01000116279 0

nonassessable shares of Common Stock as is determined by dividing \$0.50 by the Series A Conversion Price, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Series A Conversion Price shall be \$0.50 per share of Series A Preferred Stock (the "Series A Conversion Price"). Such initial Series A Conversion Price shall be subject to adjustment as set forth in Section B.1.d(iii) of this Article;

(b) Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$0.84034 by the Series B Conversion Price, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Series B Conversion Price shall be \$0.84034 per share of Series B Preferred Stock (the "Series B Conversion Price"). Such initial Series A Conversion Price shall be subject to adjustment as set forth in Section B.1.d(iii) of this Article; and

(c) Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$0.94 by the Series C Conversion Price, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Series C Conversion Price shall be \$0.94 per share of Series C Preferred Stock (the "Series C Conversion Price"). Such initial Series C Conversion Price shall be subject to adjustment as set forth in Section B.1.d(iii) of this Article.

(ii) Mechanics of Conversion. Before any holder of Designated Preferred Stock shall be entitled to convert the same into shares of Common Stock, it shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Designated Preferred Stock, and shall give written notice to the 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. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of the Designated Preferred Stock, 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. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such series of Designated 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, as amended, the conversion may, at the option of any holder tendering such Designated 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 person(s) entitled to receive Common Stock upon conversion of such Designated Preferred Stock shall not be deemed to have converted such Designated Preferred Stock until immediately prior to the closing of such sale of securities.

Fax Audit # H01000116279 0

-6-

NYK 739950-3.058904.0012

Fax Audit # H01000116279 0

(iii) **Conversion Price Adjustments for Certain Dilutive Issuances, Splits and Combinations.** The applicable Conversion Price for any series of Designated Preferred Stock shall be subject to adjustment from time to time as follows:

(a) **Adjustments for Additional Stock.** If this Corporation shall issue, after the date on which any shares of a series of Designated Preferred Stock were first issued (and, with respect to the Series C Preferred Stock, such date of first issuance shall be deemed to be November 12, 2001), to any persons, any Additional Stock (as defined below in Section B.1.d(iii)(f) without consideration or for a consideration per share less than the Conversion Price for such series of Designated Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series of Designated Preferred Stock in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this Section B.1.d(iii)(a)) be adjusted to a price determined by multiplying the applicable Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by this Corporation for such issuance would purchase at the applicable Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of such Additional Stock.

(b) **Amounts Less than One Hundredth.** No adjustment of the Conversion Price for a series of Designated Preferred Stock shall be made in an amount less than one hundredth of one cent per share, provided, that any adjustments which 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 3 years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of 3 years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in Sections B.1.d(iii)(e)(3) and (4) of this Article, no adjustment of the Conversion Price for a series of Designated Preferred Stock pursuant to this Section B.1.d(iii) of this Article shall have the effect of increasing the Conversion Price for such series above the Conversion Price for such series in effect immediately prior to such adjustment.

(c) **Common Stock for Cash.** In the case of the issuance of shares 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) **Noncash Consideration for Common Stock.** In the case of the issuance of shares of 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 by the Board of Directors irrespective of any accounting treatment.

(e) **Derivative Securities.** In the case of the issuance (whether before, on or after the applicable purchase date) of options, warrants or other rights to purchase or subscribe for shares of Common Stock, securities by their terms convertible into or exchangeable for shares of Common Stock or options, warrants or other rights to purchase or

Fax Audit # H01000116279 0

-7-

Fax Audit # H01000116279 0

subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of Section B.1.d(iii)(a) and Section B.1.d(iii)(f) of this Article:

(1) The aggregate maximum number of shares of Common Stock deliverable on 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, warrants or other rights to purchase or subscribe for shares of Common Stock shall be deemed to have been issued at the time such options, warrants or other rights were issued and for a consideration equal to the consideration (determined in the manner provided in Sections B.1.d(iii)(c) and B.1.d(iii)(d) of this Article), if any, received by this Corporation on the issuance of such options, warrants or other rights plus the minimum exercise price provided in such options, warrants or other 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 on conversion of, or in exchange for (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), any such convertible or exchangeable securities or on the exercise of options, warrants or other rights to purchase or 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, warrants or other rights were issued and for a consideration equal to the consideration, if any, received by this Corporation for any such securities and related options, warrants or other 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) on the conversion or exchange of such securities or the exercise in full of any related options, warrants or other rights (the consideration in each case to be determined in the manner provided in Sections B.1.d(iii)(c) and B.1.d(iii)(d) of this Article).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this Corporation on exercise of such options, warrants or other rights or on conversion of, or in exchange for, such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price for the relevant series of Designated Preferred Stock, to the extent in any way affected by or computed using such options, warrants or other 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 on the exercise of any such options, warrants or other rights or the conversion or exchange of such securities.

(4) On the expiration of any such options, warrants or other rights, the termination of any such rights to convert or exchange or the expiration of any options, warrants or other rights related to such convertible or exchangeable securities, the Conversion Price for the relevant series of Designated Preferred Stock, to the extent in any way affected by or computed using such options, warrants or other rights or securities or options, warrants or other rights related to such securities, shall be recomputed to reflect the issuance of

Fax Audit # H01000116279 0

-8-

NYK 739950-3.058904.0012

Fax Audit # H01000116279 0

only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued on the exercise of such options, warrants or other rights, on the conversion or exchange of such securities or on the exercise of the options, warrants or other rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections B.1.d(iii)(e)(1) and (2) of this Article shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section B.1.d(iii)(e)(3) or (4) of this Article.

(f) Additional Stock. "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section B.1.d(iii)(e) of this Article) by this Corporation after January 15, 2001 other than the Excluded Stock. "Excluded Stock" means the following:

(1) shares of Common Stock issuable on conversion of any Designated Preferred Stock;

(2) shares of Common Stock issued or issuable (1) in a public offering, before or in connection with which all outstanding shares of Designated Preferred Stock will be converted to Common Stock or (2) on exercise of warrants or rights granted to underwriters in connection with such a public offering;

(3) shares of Common Stock issuable or issued in any transaction pursuant to which the Corporation is acquiring substantially all of the outstanding Common Stock or other equity interests of any other corporation or entity or a significant portion of the assets of any such entity if the Board of Directors has determined that the value per share of the Common Stock issued in such transaction is greater than or equal to the Conversion Price of the relevant series of Designated Preferred Stock at such time; and

(4) shares of Common Stock issued to any person or entity that a majority of the directors of the Corporation, including one of the directors elected by the holders of the Series A Preferred Stock and one of the directors elected by the holders of the Series B Preferred Stock, in the exercise of their reasonable business judgment, determine offers the Corporation a strategic advantage in the operation of the Corporation such that it would be desirable to enter into a relationship with such person or entity.

(g) Stock Splits and Dividends. In the event this Corporation should at any time or from time to time after the date hereof 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 on conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no

Fax Audit # H01000116279 0

-9-

NYK 739950-3.058904.0012

Fax Audit # H01000116279 0

record date is fixed), the Conversion Prices for the Designated Preferred Stock 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 Section B.1.d(iii)(e) of this Article.

(h) Reverse Stock Splits. If the number of shares of Common Stock outstanding at any time after the date hereof is decreased by a combination of the outstanding shares of Common Stock then, following the record date of such combination, the Conversion Prices for the Designated Preferred Stock 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 the outstanding shares of Common Stock as a result of such combination.

(iv) Other Distributions. In the event the Corporation shall declare a distribution to the holders of Common Stock of the Corporation payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section B.1.d(iii)(f) of this Article, then, in each such case for the purpose of this Section B.1.d(iv), the holders of Designated 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 the Corporation into which their shares of Designated Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(v) 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 B.1.d or Section B.1.b of this Article) provision shall be made so that the holders of the Designated Preferred Stock shall thereafter be entitled to receive upon conversion of such Designated 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 B.1.d with respect to the rights of the holders of such Designated Preferred Stock after the recapitalization to the end that the provisions of this Section B.1.d (including adjustment of the applicable Conversion Price then in effect and the number of shares purchasable upon conversion of such Designated Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(vi) No Impairment. The Corporation will not, without the consent of the holders of at least a majority of shares of Designated Preferred Stock, by amendment of its 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 the Corporation, but will at all times in good faith assist in

Fax Audit # H01000116279 0

-10-

Fax Audit # H01000116279 0

the carrying out of all the provisions of this Section B.1.d 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 Designated Preferred Stock against impairment.

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

(a) No fractional shares shall be issued on the conversion of any share or shares of the Designated Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Designated 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 any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Corporation's Board of Directors) on the date of conversion.

(b) On the occurrence of each adjustment or readjustment of the Conversion Price of a series of Designated Preferred Stock pursuant to this Section B.1.d(iii), 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 Designated Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts on which such adjustment or readjustment is based. This Corporation shall, on the written request at any time of any holder of Designated Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (a) such adjustment and readjustment, (b) the Conversion Price for such series of Designated Preferred Stock at the time in effect and (c) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received on the conversion of a share of such series of Designated Preferred Stock.

(viii) **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 Designated Preferred Stock, at least 20 days prior to the date on which any such record is to be taken for the purpose of such dividend, distribution or right (the "Record Date"), a notice specifying the Record Date and the amount and character of such dividend, distribution or right.

(ix) **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 Designated 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 Designated Preferred Stock; and, if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Designated Preferred Stock, in addition to such other remedies as shall be available to the holders of

Fax Audit # H01000116279 0

-11-

Fax Audit # H01000116279 0

Designated 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 stockholder approval of any necessary amendment to these Articles of Incorporation.

(x) **Notices.** Any notice required by the provisions of this Section B.1.d shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of this Corporation.

e. **Voting Rights.** Except as otherwise required by law, the holder of each share of Designated Preferred Stock shall have the right to one vote for each share of Common Stock into which such share of Designated 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 stockholders meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Designated Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

f. **Protective Provisions.**

(i) From and after the date hereof, this 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 Designated Preferred Stock or, in the case of the actions described in Subsections (b), (g) and (h) of this Section B.1.f., the approval (by vote or written consent) of the holders of all of the then outstanding shares of Designated Preferred Stock who are or reasonably may be deemed to be adversely affected by such action:

(a) Issue any equity securities (including additional shares of Preferred Stock) or securities convertible, exchangeable or exercisable into equity securities of this Corporation, other than as contemplated by Section B.1.d of this Article regarding the issuance of securities, on and as of the respective purchase or issuance dates, to the holders of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock;

(b) Amend the Articles of Incorporation or Bylaws of the Corporation or any of its subsidiaries;

Fax Audit # H01000116279 0

-12-

Fax Audit # H01000116279 0

(c) Sell, lease, transfer convey, or otherwise dispose of all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a wholly-owned subsidiary corporation), effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of this Corporation is disposed of, or otherwise effect a liquidation; provided, that, this Section B.1.f(i)(c) shall not apply to a merger effected solely for the purpose of changing the domicile of the Corporation;

(d) Liquidate, dissolve, wind-up, re-capitalize or re-organize the Corporation or any of its subsidiaries;

(e) Declare any dividends or distributions on the Common Stock;

(f) Change in a material way the business of the Corporation or its subsidiaries as currently conducted or as proposed to be conducted;

(g) Change the rights or terms of the Designated Preferred Stock;

(h) Authorize, create or issue shares of any class of stock having rights, preferences, or privileges superior or on parity with the Designated Preferred Stock;

(i) Increase or decrease the authorized number of shares of Designated Preferred Stock or Common Stock;

(j) Enter into any transaction or series of transactions with an officer, manager, director or shareholder of the Corporation, or any affiliate of such parties, including family members with a value in excess of \$25,000;

(k) Incur any indebtedness or guarantee obligations in excess of \$1,000,000 in the aggregate;

(l) Commence any voluntary bankruptcy proceeding or otherwise take any action to declare the Corporation or any of its subsidiaries insolvent;

(m) Other than in the ordinary course of business, sell, lease, exchange, transfer or otherwise dispose of, directly or indirectly, in a single transaction or series of related transactions, any assets of the Corporation or any of its subsidiaries having a value in excess of \$500,000;

(n) Other than in the ordinary course of business, acquire any assets (including securities) having a value in excess of \$100,000;

(o) Change the authorized number of directors of the Corporation; or

Fax Audit # H01000116279 0

(p) Establish an annual budget of the Corporation.

g. **Status of Converted Stock.** In the event any shares of Designated Preferred Stock shall be converted pursuant to Section B.1.d of this Article, the shares so converted shall be cancelled and shall not be issuable by the Corporation. The Articles of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

h. **Preemptive Rights.** Other than with respect to the sale and issuance of the Designated Preferred Stock (and any Common Stock issuable upon conversion thereof), the holders of the Designated Preferred Stock shall be entitled to acquire proportional amounts of the Corporation's capital stock in any future offering of Common Stock, Preferred Stock, options, warrants, or any other rights to acquire shares of capital stock of the Company to maintain pro-rata ownership of the Company's capital stock on the same terms and conditions as other investors in any such future offering.

C. **Common Stock.**

1. **Dividend Rights.** No dividend shall be paid on the Common Stock in any fiscal year so long as any shares of Designated Preferred Stock are outstanding.

2. **Liquidation Rights.** The holders Common Stock shall have the liquidation rights as set forth in Section B.1.b.

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

Article VI

Registered Office and Agent

The street address of the registered office of this Corporation is Gunster Yoakley, One Biscayne Tower, Suite 3400, 2 South Biscayne Boulevard, Miami, FL 33131-1897 and the name of the registered agent of this Corporation at the address is Valdes-Fauli Corporate Services, Inc. Pursuant to Florida Statute 607.0501(3), a written acceptance is attached.

Article VII

Directors

A. **Number of Directors.** The Board of Directors shall consist of not less than three (3) and more than five (5) directors. Until their successors are elected in accordance with the Bylaws, the directors shall be Stephen M. Dye, Scott Adams, and Bodo Schnabel.

Fax Audit # H01000116279 0

B. Preferred Stock Representatives. For so long as Cenetec holds any of the Series A Preferred Stock outstanding, holders of a majority of Series A Preferred Stock, voting as a class, shall be entitled to elect one (1) member to the Board of Directors. For so long as ComRoad holds any of the Series B Preferred Stock outstanding, holders of a majority of the Series B Preferred Stock, voting as a class, shall be entitled to elect one (1) member to the Board of Directors.

C. Appointment of Director. In the event of the resignation, death, removal or disqualification of the director elected pursuant to Section B of this Article, a new director shall be elected to the Board of Directors in accordance with Section B of this Article.

D. Common Stock Representatives. The holders of Common Stock together with the holders of the Designated Preferred Stock voting together as a single class shall be entitled to elect all remaining directors.

Article VIII

Management

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by these Articles of Incorporation.

B. The Board of Directors may from time to time make, amend, supplement or repeal the Bylaws, provided, however, that such action does not conflict with these Articles of Incorporation.

C. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

Article IX

Powers

The Corporation shall have all of the corporate powers enumerated in the Florida Business Corporation Act.

Fax Audit # H01000116279 0

Article X

Indemnification

Provided the person proposed to be indemnified satisfies the requisite standard of conduct for permissive indemnification by a corporation as set forth in the applicable provisions of the Florida Business Corporation Act (currently, Sections 607.0850(1) and (2) of the Florida Statutes), as the same may be amended from time to time, the Corporation shall indemnify its officers and directors, and may indemnify its employees and agents, to the fullest extent permitted by the provisions of such Act, as the same may be amended and supplemented, from and against any and all of the expenses or liabilities incurred in defending a civil, criminal, administrative or investigative action, suit or proceeding (other than in an action, suit or proceeding brought by this Corporation upon authorization of the Board of Directors) or other matters referred to in or covered by said provisions, including advancement of expenses prior to the final disposition of such proceedings and amounts paid in settlement of such proceedings, both as to action in their official capacity and as to action in any other capacity while an officer, director, employee or other agent. Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall 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 such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Section. Such expenses (including attorneys' fees) incurred by other employees and agents shall also be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate. The indemnification and advancement of expenses provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of shareholders or directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. Such indemnification shall 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 and personal and other legal representatives of such person. Except as otherwise provided above, an adjudication of liability shall not affect the right to indemnification for those indemnified.

3. The foregoing Third Amended and Restated Articles of Incorporation have been duly adopted by joint written consent of the board of directors and the holders of Series A Preferred Stock, the holders of Series B Preferred Stock and the holders of Common Stock of Esemde, Inc. in lieu of a special meeting, all in accordance with the provisions of Sections 607.0704, 607.0821, 607.1003 and 607.1007 of the Florida Statutes, delivered to Esemde, Inc. on November 12, 2001, the number of votes cast for each of the Series A Preferred Stock, Series B Preferred Stock and Common Stock sufficient for approval.
4. The foregoing duly adopted Third Amended and Restated Articles of Incorporation shall supersede and replace the Second Amended and Restated Articles of Incorporation and any and all amendments thereto.

IN WITNESS WHEREOF, the undersigned, as President of the Corporation, has executed these Articles of Restatement this 12 day of November, 2001.



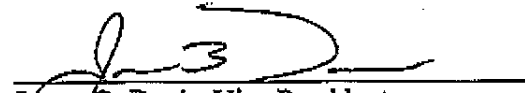
Stephen M. Dye
President

Fax Audit Number H01000116279 0

ACCEPTANCE OF APPOINTMENT AS REGISTERED AGENT

Having been named as registered agent for Esemde, Inc, a Florida corporation (the "Corporation"), in the foregoing Articles of Incorporation, I, on behalf of the Corporation, hereby state I am familiar with and agree to accept the duties and responsibilities as registered agent for said Corporation and to comply with any and all Florida Statutes relative to the complete and proper performance of the duties of registered agent.

REGISTERED AGENT:


James B. Davis, Vice President
Valdes-Fauli Corporate Services, Inc.

Fax Audit Number H01000116279 0