FORM PTO-1618A Expires 06/30/99 OMB 0651-0027



01-13-1999

1.5. Department of Commerce latent and Trademark Office TRADEMARK

100943616 RECORDATION FURM COVER SHEET

TRADE	EMARKS ONLY
TO: The Commissioner of Patents and Trademarks	: Please record the attached original document(s) or copy(ies).
Submission Type    X   New	Conveyance Type
X New	Assignment License
Resubmission (Non-Recordation) Document ID #	Security Agreement Nunc Pro Tunc Assignmen
Correction of PTO Error	Merger Effective Date  Month Day Year
Reel # Frame #	4 7 98
Corrective Document	X Change of Name
Reel # Frame #	Other
Conveying Party	Mark if additional names of conveying parties attached Execution Date
Name Immersion Human Interface Corporation	
Formerly	
Individual General Partnership	Limited Partnership X Corporation Association
Other	
Citizenship/State of Incorporation/Organiza	ation California
Receiving Party	Mark if additional names of receiving parties attached
Name Immersion Corporation	
DDA/AVA/TA	
DBA/AKA/TA	
Composed of	
Address (line 1) 2158 Paragon Dr.	
Address (line 2)	
Address (time 3) San Jose	California 95131
Individual General Partnership	State/Country Zip Code Limited Partnership If document to be recorded is an
, —	assignment and the receiving party is not domiciled in the United States, an
X Corporation Association	appointment of a domestic representative should be attached.
Other	(Designation must be a separate
X Citizenship/State of Incorporation/Organiza	document from Assignment.)  Ation California
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Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to: Commissioner of Patents and Trademarks, Box Assignments , Washington, D.C. 20231

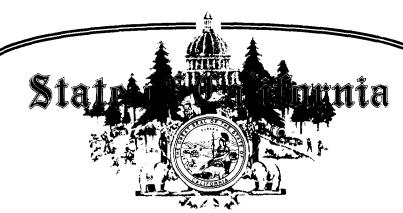
FORM PTO-1 Expires 06/30/99 OMB 0651-0027	618B	Page	2		U.S. Department of Commerce Patent and Trademark Office TRADEMARK
	epresentative Name	e and Address	Enter for the fir	st Receiving Pa	rty only.
Name [					
Address (line 1)					
Address (line 2)					
Address (line 3)					
Address (line 4)					
Correspond	ent Name and Add	ress Area Code and	Telephone Numbe	r (408) 467-1900	
	Timothy A. Lacey				
Address (line 1)	2158 Paragon Dr.				
Address (line 2)	San Jose, CA 95131				
Address (line 3)					
Address (line 4)	15				
Pages	Enter the total number including any attachm		ached conveyand	ce document	# 19
Trademark /	Application Number		on Number(s)	Mark if a	dditional numbers attached
	Trademark Application Num			R BOTH numbers f	or the same property).
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75-099199	75-347584	75-363057	1901565	2064935	2066952
75-099321	75-347585	75-363058	2034207	2064941	2112173
Number of I	Properties Enter th	e total number of pr	operties involved	d.	25
Fee Amoun	t Fee Amo	ount for Properties L	isted (37 CFR 3	.41	640.00
Method o Deposit A	f Payment: account	Enclosed X D	eposit Account		
(Enter for p	ayment by deposit account or	r if additional fees can be Deposit Account	charged to the accou Number:	nt.) #	
		Authorization to	charge additional f	ees: Yes	No X
Statement a	nd Signature				
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.					
-Time thy	A Locey, CFO	Sun	D(1/2)		12/28/98
Name	of Person Signing		Signature		Date Signed

FORM PTO-1618C Expires 06/30/99 OMB 0651-0027

# RECORDATION FORM COVER SHEET CONTINUATION TRADEMARKS ONLY

U.S. Department of Commerce Patent and Trademark Office TRADEMARK

Conveying Party Enter Additional Conveying Party	Mark if additional names of conveying parties attached  Execution Date  Month Day Year
Name Immersion Humanimterias	
Formerly JAN 4 150)	
Individual General Partnership	Limited Partnership X Corporation Association
Other	
Citizenship State of Incorporation/Organization	on California
Receiving Party Enter Additional Receiving Party	Mark if additional names of receiving parties attached
Name Immersion Corporation	
DBA/AKA/TA	
Composed of	
Address (line 1) 2158 Paragon Dr.	
Address (line 2)	
Address (line 3) San Jose	California 95131
City  Individual General Partnership	State/Country Zip Code  Limited Partnership If document to be recorded is an
	assignment and the receiving party is
X Corporation Association	not domiciled in the United States, an appointment of a domestic representative should be attached
X Corporation Association Other	appointment of a domestic
	appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)
Other  X Citizenship/State of Incorporation/Organization  Trademark Application Number(s) or R	appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)  ion California
Other  X Citizenship/State of Incorporation/Organization  Trademark Application Number(s) or R	appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)  ion California  Registration Number(s) Mark if additional numbers attached
Other  X Citizenship/State of Incorporation/Organization  Trademark Application Number(s) or R  Enter either the Trademark Application Number or the R	appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)  ion California  Registration Number(s) Mark if additional numbers attached registration Number (DO NOT ENTER BOTH numbers for the same property).
Other  X Citizenship/State of Incorporation/Organizate  Trademark Application Number(s) or R  Enter either the Trademark Application Number or the R  Trademark Application Number(s)	appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)  ion California  Registration Number(s) Mark if additional numbers attached registration Number (DO NOT ENTER BOTH numbers for the same property).  Registration Number(s)
Other  X Citizenship/State of Incorporation/Organization  Trademark Application Number(s) or R  Enter either the Trademark Application Number or the R  Trademark Application Number(s)  75-375978	appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)  ion California  Registration Number(s) Mark if additional numbers attached registration Number (DO NOT ENTER BOTH numbers for the same property).  Registration Number(s)
Other  X Citizenship/State of Incorporation/Organization  Trademark Application Number(s) or R  Enter either the Trademark Application Number or the R  Trademark Application Number(s)  75-375978  75-375979	appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)  ion California  Registration Number(s) Mark if additional numbers attached registration Number (DO NOT ENTER BOTH numbers for the same property).  Registration Number(s)
Other  X Citizenship/State of Incorporation/Organizate  Trademark Application Number(s) or R  Enter either the Trademark Application Number or the R  Trademark Application Number(s)  75-375978  75-375979  75-375977	appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)  ion California  Registration Number(s) Mark if additional numbers attached registration Number (DO NOT ENTER BOTH numbers for the same property).  Registration Number(s)
Other  X Citizenship/State of Incorporation/Organization  Trademark Application Number(s) or R  Enter either the Trademark Application Number or the R  Trademark Application Number(s)  75-375978  75-375979  75-468120	appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)  ion California  Registration Number(s) Mark if additional numbers attached registration Number (DO NOT ENTER BOTH numbers for the same property).  Registration Number(s)
Other  X Citizenship/State of Incorporation/Organizate  Trademark Application Number(s) or R  Enter either the Trademark Application Number or the R  Trademark Application Number(s)  75-375978  75-375979  75-468120  75-468127	appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)  ion California  Registration Number(s) Mark if additional numbers attached registration Number (DO NOT ENTER BOTH numbers for the same property).  Registration Number(s)



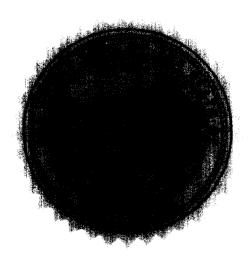


I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of  $\frac{1}{2}$  page(s) was prepared by and in this office from the record on file of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, + execute this certificate and affix the Great Seal of the State of California this

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Bill mes

Secretary of State

Sec State Form CE 108 (rev. 4/97)

TRADEMARK

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## 1853396 FOURTH AMENDED AND RESTATED

#### ARTICLES OF INCORPORATION

A 6 97 E.

OF

#### IMMERSION HUMAN INTERFACE CORPORATION

Louis B. Rosenberg and Timothy A. Lacey cortify that:

- They are the duly elected and acting President and Chief Fin. notal Officer, respectively, of Immersion Human Interface Corporation, a California corporation (the "Cosporation").
- 2. The Articles of Incorporation of the Corporation shall be amonded and restated to read in full as follows:

#### ARTICLET

## NAME

The name of this corporation is Immersion Corporation.

#### ARTICLE II

## **PURPOSES**

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California of a sthan the banking business, the trust company pusiness or the practice of a profession permitted to be incorporated by the California Corporations Code.

## ARTICLE III

## STOCK

The Corporation is authorized to issue two classes of shares of stock to be configurated. respectively Preferred Stock and Condinio (Stock). The total number of shares of Preferred Stock The Componation shall have nuther its to assume is 5,000,000 and the total number of somes of forms on Stock the Corporation. It ill have a absorby to assuc is 160,000,000.

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The shares of Preferred Stock authorized by these Fourth Amended and Restated Articles of Incorporation (the "Restated Articles") may be issued from time to time in one or more series. The board of directors of the Corporation is authorized to determine, alter or eliminate any or all of the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock, and to fix, alter, or reduce the number of shares comprising any such series (but not below the number of such shares then outstanding) and the designation thereof, or any of them, and to provide for rights at d terms of redemption or conversion of the shares of any such series.

The first series of Preferred Stock shall be designated "Series A Preferred Stock" consisting of 618,500 shares. The second series of Preferred Stock shall be designated "Series B Preferred Stock" consisting of 116,334 shares. The third Series of Preferred Stock shall be designated "Series C Preferred Stock" consisting of 1,071,428 shares. The fourth Series of Preferred Stock shall be designated "Series D Preferred Stock" consisting of 1,721,068 shares. The relative rights, prefer noes, privileges and restrictions granted to be supposed upon the Common Stock, the Series A, Series B, Series C, and Series D Preferred Stock of the holders thereof are as follows:

# Section I Voting Rights.

Section 1.1. Except as otherwise required by law or as sectorth recein, the shares of Series A. Series B. Series C and Series D Preferred Stormshall be voted equally and together with the shares of the Corporation's Common Stock at any annual or special meeting of shareholders of the Corporation, or may not by written consent in the same manner as the Corporation's Common Stock, upon the following basis: each holder of shares of Series A. Series B. Series C and Series D Preferred Stock shall be entitled to such number of votes for the Series A. Series B. Series C and Series D Preferred Stock held by him on the record date fixed for each meeting, or on the effective date of such writted consent, as shall be equal to the whole number of shares of the Corporation's Common Stock into which all of his shares of Series A. Series B. Series C and Series D Preferred Stock are convertible immediately after the close of business on the record date fixed for such meeting or the effective date of such writted consent.

# Section 2. Totsetive Provisions

Section 2.1 If any shares of Series C Preferred Stock are a tistage ing, the Corporation shall a stable without first obtaining the approval by vote or we tren consent, in the manner provided by law, of the holders of more than they present (50%) of the both and the observed Series C Preferred Stock then

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outstanding, voting together as a single class, undertake any of the followard actions: (a) amend or change the rights, preferences, privileges or powers of, or the restrictions provided for the benefit of the Series C Preferred Stock; or (b) authorize, create or issue shares of any class of stock having rights, preferences, privileges or powers superior to that of the Series C Preferred Stock; or (c) reclassify any outstanding shares of any class of stock into shares having rights, preferences, privileges or powers as to dividends or assets senior to the preferences, rights, privileges or powers of the Series C Preferred Stock, or (d) amend the Corporation's Restated Articles to adversely affect the rights. preferences, privileges or powers of the Series C Preferred Stock; provided, however, that any amendment to the Corporation's Restated Articles authorizing any class of stock having rights, preferences, privileges or powers on parity with the Series C Preferred Stock shall not be deemed to adversely affect the rights of the Series C Preferred Stock, respectively.

Section 2.2 If any shares of Series D Preferred Stock are cutstanding. the Corporation shall not, without first obtaining the approval by vote or written consent, in the manner provided by law, of the holders of more than hitty neadent (50%) of the total number of shares of Series D Preferred Stock ther outstanding, voting together as a single class, undertake any of the following, actions: (a) amend or change the rights, preferences, privileges or powers of or the restrictions provided for the benefit of the Series D Preferred Sto & or (b) authorize, create or issue shares of any class of stock having right; preferences, privileges or powers superior to that of the Series D Preferred Stock; or (c) reclassify any outstanding shares of any class of stock into shares having rights, preferences, privileges or powers as to dividends or as this station to the preferences, rights, privileges or powers of the Series D Preferred litor. or (d) an end the Corporation's Restated Articles to adversely affect the rights. preferences, privileges or powers of the Series D Preferred Stock; privided however, that any amendment to the Corporation's Restated Articles suthor zing any class of stock having rights, preferences, privileges or powers on parity with the Series D Preferred Stock shall not be deer led to adversely affect if a rights of the Series D Preferred Stock, respectively.

Section 3 1. Wideads.

Section 3.1 The helders of the then outstanding Series A. Crist ... Series C and Series D.P. efected Stock shall be entitled to receive in a 1 figural year, prior and in preference to any distribution of dividends to the holders of the Common Stock, when, as and it, declared by the

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of ord of Directors, one of any a sees of the time legall invailable therefor, division is in cash at be rule of \$0.02, \$0.06, \$0.14, and \$6.33 per annum per share, respectively on a per massubance aradji sted for any con abdutions, no abi varous, stoch distributions, stock de fen. Haock si t 2. sin dar events (each a ' Recap tabz too) Escat'). It is rig't to such dividen Territor & Series A Series B. Series C and Junic D. Treferred Stock shall lot be humalative and a mi had accord o and fers of Series A. Sera a B. Sellers Clar Review D. referred altool, by reason of I first to: listide ids on sold stores are not lie called a consprior spar, nor shall any unde es a tumpaid hylderids bear or accrue interes. Decide ids may be oblared or paid upon st 28 C. Johnmor Stock in any fisculty rands to a Corporation only it days lends shall have been a Jack "declare I and set apart upon, as the core may be add strates of Scries A. Series B. Series and eries D to far ed Stock at such and all rice ic look's on star of each tise. I year of the a Har ion solutions the quarer in which is the helidend's upon common shares are declar Life dividence or B's paid on any Color is a Society of example of evidend is paid with res 111 of the cling shopes of States A. Thank & The cold Charles D Preferred Stoh. i moent i to the offishing of the action Services. Service of and Series Di Preferred Stock Dr. Salid er un to amount of such to the I for it to mean took into which each s 1 1 100 Indiana, Series B. Larre Com into the D. Dachered Stock ecold hearbe conv.

Section 2.2 June 1960 of Series A. Arres 3, Series Con Series D. Will A Shak Build after made to your establishment of sections 302, 502 and 500 fill control The depth will be still of a firm of the witter and by the Co out win the family to the second second with a beginning to be first or comple metilia. to the first them effects to the organization of the segmentation pro-Transfer the remarkable for the street of the term of the control of the co to be region to A final Stock opening that in Figure 1. A finition purvis Common S. Maria efercad love the Library decreases on the control of determination the Box ent to building the 100011

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- (a) The holders of Series C and Series D Preferred Stock than outstanding shall be entitled to be paid out of the assets of the Corporation, on a part passu basic, for each share of Series C or Series D Preferred Stock then held by them, first, prior and in preference to any distribution to the holders of the Series A and Series B Preferred Stock, and the Common Stock, an amount equal to \$1.40 per share of Series C Preferred Stock and \$3.37 per share of Series D Preferred Stock (as adjusted for Recapitalization Events) plus an amount equal to all declared and unpaid dividends with respect thereto. If upon the occurrence of such event, the assets and funds available for distribution are insufficient to permit the payment to the holders of Series C and Series D Preferred Stock the full preferential amount, then the entire assets and funds of the Corporation legally available for distribution to shareholders of the Series C and Series D Preferred Stock ratably in proportion to the full preferential amount which they would be entired to receive pursuant to the preceding sentence of this Section 5.1(a).
- Series Di Preferred Stock of the full preferential amounts to which they shall be satisfied, if any, as aforesaid, the holders of the Series A and Series B Preferred Stock then outstanting shall be entitled to be paid, partiplassu, out of the assets of the Corporation, for each shall of Socies A or Series B Preferred Stock then held by them, first, prior and in preference to any distribution to the holders of the Comman Stock, and amount equal to A) \$0.40 per share for the Series A Preferred Stock and \$6.00 per shall effort the Series B Preferred Stock (as adjusted for Recapitalization Events) plus (B) in presourt equal to all declared and unpaid displaced with respect hereto.
- Series B. Series C and Series D Preferred Stock of the fell preferential amount: To which they shall be entitled, if any, as aforesa d and until the holders of the Series C and Series D preferred Stock then outstanding have received an additional \$1.40 and \$2.02 per share on Series C and Series D Preferred Stock respectively (as adjusted for Eccapitalization Events) the harders of the Conmon Stock and the Series C and Series D Preferred Stock shall be entited to a ceive, product, the remaining assets of the Corporation available for distribution to shareh offers passed on the number of shares of Common Stock then held, with each share of Series C and Series D Preferred Stock treated as the number of shares of Common Stock into which such share of Series C. also as D Preferred Stock treated as the number of shares of Common Stock into which such share of Series C. also as D Preferred Stock is then convertible.
- (d) After physical has been made to the holders of the Sence C and Series I. Preferred Stock and holders of Common Stock pursuant to Section 5.1%), the holders of Common Stock shall be cutified to receive, promiting assets of the hough a gion as allable for distribution to sharelength, based on the number of charges of Common to sharelength, based on the number of charges of Common to sharelength, based on the number of charges of Common to sharelength.

# Section 5.2. By his Doe legal to the Lispandshor

a) or he perposes of this Section 5 and with respect to the deries A to illustrate B Preferred State, the most hid distance ment of the Corporation with a memory of a corporation or corporation of the thin and solless median building) in which the

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shareholders of the Corporation immediately prior to such transaction hold fifty percent (50%) or less of the total voting power for the election of directors of the acquiring or surviving entity immediately following the transaction, or (ii) the sale, transfer or other disposition of all or substantially all of the assets of the Corporation or (iii) the consummation of any transaction or series of related transactions which results in the Corporation's shareholders in mediately prior to such transaction holding fifty percent (50%) or less of the voting power of the equiring or surviving entity immediately following the transaction (each such event is here a after defined as a "Corporate Sale") shall not be deemed to be a liquidation, dissolution or wincing top

(b) For purposes of this Section 5 and with respect to the Suries C and Series D Preferred Stock in Corporate Sale shall be deemed a liquidation, dissolution for winding up.

Section 6 Conversion Rights.

section 6.1 Conversion of Series A and Series B Preferred Stock.

- Operand Conversion. Each share of Series A and Series B (a) Preferred Stock will be convertible, at the option of the holder thereof, at the office of the Corporation or any transfer agent for the Series A and Sories B Preferred Stock anto Common Stock. The number of shares of Count on Stock into which each share of Serie: A Fr Ferred Stock will be converted with be equal to \$0.40 divided by the Series A Convers on Price (as exception defined) such conversion ratio being referred to as the "Series A Conversion Rate." The initial Series A Conversion Files will be \$0.40 and the initial Series A Conversion Rate shall be one-to-one. The number of shares of Common Stock into which each share of Series B Preferred Stock will be converted will be equal to \$6.00 divided by the Series in Cornersion Prize (as hereafter defined) such conversion ratio being referred to as the "Serie B Conversion Report The initial Series B Conversion Price will be \$6.00 and the initial Serie 3.01, version Riccish The one-to-one. Any de seaso or increase of the Series A Conversion wrice Conversion Rate, or the Series B. Tonversion Price or Conversion Rate as described to this Section I will cause an increase of decrease in the conversion rate or conversion price ccordingly.
- (b) Automatic Conversion of the Series A and Series B Preferred Stock will be converted into the est of Common Stock at the then effective Series A Conversion Rate or Series B Conversion Rate:
- (i) distinction statement on for the declarities Act of 1933, as amended, (the "courses Act") of an underwritten public curring to be than a registration on Ferra S-8, Form 1-14 coupled ble of success or threshold a ding the Corporation's Common Stock within a couple in spatial coupling to cash proceeds the order writers commissions and expenses) to a Common Stock within a factor of a station of the writers commissions and expenses) to a Common Common Stock within S5.000 (100) and which are apartic office of not less than S5.000 and a more as a particular or send that are made to the stations are besufficial or and the leading of the send of the

- (ii) immediately upon the affirmative vote or written consent of the holders of a majority of the than outstanding shares of Series A Preferred Stock and Series B Preferred Stock, voting together as a class; or
- (iii) on the date that less than twenty percent (20%) of the highest number of the total number of shares of Series A Preferred Stock and Series B Preferred Stock that have been outstanding at any time remain outstanding.
- Combinations of Common Stock In the event the Corporation at any time or from time to time after the effective date of the initial sale of Series B Preferred Stock (a) effects a subdivision or combination of its outstanding Common Stock into a greater or lesser number of shares without a proportionate and corresponding subdivision or combination of its outstanding Series A Preferred Stock and its outstanding Series B Preferred Stock or (b) issues a dividend or other distribution of additional shares of Common Stock or other securities or rights collectively bereinafter referred to as "Common Stock Equivalents" convertible into or entitling the holder thereof to receive additional shares of Common Stock without payment of any consideration by such holder for such Common Stock Equivalents or the additional shares of Common Stock, then the existing Series A Conversion Price and Series B Conversion Price will be corressed or increased proportionately.
- (d) Respitalizations. If at any time or from time to time to the norre shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or safe of assets transaction provided for in Section 5), provision shall be made so that the holders of the Series A and Series B Preferred Stock will thereafter be entitled to receive upo to avaisation of the Series A and Series B Preferred Stock the number of shares of stock or other securities or property of the Corporation or of envise, to which a holder of Common Stock believes ble upon convention would have been entitled on such recipitalization. In any such case appropriate adjustment shall be made in the application of the provisions of this Section 6. With aspect to the rights of the holders of the Series A and Series B Preferred Stock after the mappet sization to the end that the provisions of this Section 6.1 (including adjustment of the Series A or Series B Preferred Stock) shall be applicable after that event in as nearly a read-adent manner as may be practicable.
- (e) Conficate as to Adjustments. Upon the occurrence of the second adjustment of the Series A Conversion Rate or Series B Conversion? the prisual to this Section 5, the Concernion at its expense promptly will compute some adjustment or readjustment in accordance with the terms hereof and prepare and furnish to the little of Stries workers. Stock, a certificate setting forth such adjustment of remaintment at 1 showing in detail the facts upon which such adjustment or readjustment is to the summent of showing in detail the facts upon which such adjustment or readjustment is to the Preferre I stock. All furnish or cause the arrished to tech holder of Series A or the second city and the such adjustments and readjustments. The Series wor Series B Conversion Rate as facility in effect, additing the number of source of the series wor Series B Conversion Rate as facility in effect, additing the number of source of the series and the onest at, if any, of other page my which

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at the time would be received upon the conversion of the Series A or Series B Preferre! Stock held by such holder.

## Section 6.2 Conversion of Series C and Series D Preferred Stock.

- (a) <u>Conversion</u>. The holders of the Series C and Series D Preferred Stock have conversion rights as follows (the "<u>Conversion Rights</u>").
- 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 into the number of fully paid and nonassessable shares of Common Stock which results from dividing the Series C Conversion Value (as defined below) by the Series C Conversion Price (as defined below) per share in effect for such series at the time of conversion. The initial Series C Conversion Price per share of the Series C F a ferred shall be \$1.40, and the Series C Conversion Value per share of the Series C Preferred shall be \$1.40. The initial Series C Conversion Price per share of the Series C Preferred Stock shall as subject to adjust ment from time to time as provided in Section 6.2(a)(iv) hereof. Upon conversion, all declared and unpaid dividends on the Series C Preferred Stock shall be paid in the hote the extent legally permitted.
- Series D Preferred Stock shall be convertible, at the option of the holder thereof at any time after the date of issuance of such share ato the number of fully paid and nonassessable shares of Common Stock which results from dividing the Series D Conversion Value (as leftned below) by the Series D Conversion Price (as defined below) per share in effect for such series 1 the time of conversion. The initial Series I Conversion Price per share of the Series D Inferred shall be \$3.37 and the Series D Conversion Price per share of the Series D Preferred shall be \$3.37 and the Series D Conversion Price per share of the Series D Preferred Stock shall be \$1.37. The initial Series D Conversion Price per share of the Series D Preferred Stock shall be \$1.37. The initial Series D Conversion Price per share of the Series D Preferred Stock shall be \$1.37. The initial Series D Conversion Price per share of the Series D Preferred Stock shall be \$1.37. The initial Series D Conversion Price per share of the Series D Preferred Stock shall be \$1.37. The initial Series D Conversion Price per share of the Series D Preferred Stock shall be \$1.37. The initial Series D Conversion Price per share of the Series D Preferred Stock shall be \$1.37. The initial Series D Conversion Price per share of the Series D Preferred Stock shall be \$1.37. The initial Series D Conversion Price per share of the Series D Preferred Stock shall be \$1.37. The initial Series D Conversion Price per share of the Series D Preferred Stock shall be \$1.37. The initial Series D Conversion Price per share of the Series D Preferred Stock shall be \$1.37. The initial Series D Conversion Price per share of the Series D Preferred Stock shall be \$1.37. The initial Series D Conversion Price per share of the Series D Preferred Stock shall be \$1.37. The initial Series D Conversion Price per share of the Series D Preferred Stock shall be \$1.37. The initial Series D Conversion Price per share of the Series D Preferred Stock shall be \$1.37. The initial Series D Conversion Price pe
- Stock. I ach share of Series C and Series D Preferred Stock will be converted into shares of Common Stock at the the reflective Sories C Conversio. Price, immediately up on the closing of the sale of stock pursuant to a registration on Forms S-3, form S-4 or comparable course assortioned by enering (other than a registration on Forms S-3, form S-4 or comparable course assortiones) emering the Corporation's Corporation (one Stock (an "offering") which result in an expate car happeneds to the Corporation of meant than \$10,000,000 and which has a pure containing price clost to sthan \$100 per shore (as add) ted for Recapita ization Events).
- (v) Joins more to Conversion Prior of Series (Land Louiss)? It is force to took.
- $(1 S_1 \circ ab De nitions, \ \ \text{for purposes} \quad 0 \mapsto \text{ 2-ction}$  Conservative following each  $\circ$  for solutionally

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- (B) "Convertible Securities" stall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.
- (C) "Additional Shares of Common' shall mean all shares of Common Stock issued (or, pursuant to Section 6.2(a)(iv)(3) below, deeped to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:
- (I) upon conversion o shares of Series A, Series B, Series C and Series D Preferred Stock;
- (III upon exercise of we rante to purchase an aggregate of (i) 228, 150 shares of Common Stock, (ii) 7,500 shares of Series A Preferred Stock, and (iii) 18,000 shares of Series C Preferred Stock outstanding as of the Original Issue Date (as adjusted for Recapitalization Events);
- (II)—to officers, directors or employees of, or consultants to, the Corporation pursuant to a stock grant, option plan or purch so plan or other employee stock incentive program or agreement approved by the Board, not to exceed 7,400,000 snares, inclusive of the 3,549,596 shares subject to outstanding options and the 1,365,172 shares a steed upon exercise of outstanding options but not of a purchases, cancellations, term inations and expirations, since the Original Issue Date (as adjusted for Recapitalization avenue).
- (IV)—in connection with the az misition by the Company of another business entity or majority ownership thereof, provide (that it) such entity is not an affiliate (any person or entity controlling, controlled by or unde —ometon control with the Company, an "Affiliate") of any director, officer or other natural person who is an Affiliate of the Company (a "Control Person") other than in such Control Person i's conacity as an officer, director or shareholder of the Company and such Control Person does a to thave a material at terest in such entity other than its an officer, director or shareholder of the Company or (B) such issuances of Common Stock issued or issuable are made in a bona fid—unity—length is assection as determined by the Board of Directors of the Company;
- (V) in an amount up to 750.0%) shares of a Common Stock (as adjusted for Freeigntalization Event.), in connection with a place of financing transaction approved by the Commany's Board of Directors:
  - $(V_i) = as a \ dividend \ or \ di = iba. \ i \ on \\ \text{the same Series B. Series Con Series In Proteined Stool}.$

(VII)—upon exercise of nonqualified stock options outstanding as of the Original Issue Date to purchase 100,000 shares of Common Stock (as adjusted for Recapitalization Events):

(VIII) by way of dividend or wher distribution on shares of Common Stock excluded from the definition of Additional Shares of Common by the foregoing clauses (I) through (VII) or this clause (VIII); or

(IX)—solely for purposes of releabiling adjustments to the Series D Conversion Price, Additional Shares of Common shall also exclude all shares of Common Stock issued or issuable in an amount up to 800,000 shares of Common Stock (as adjusted for Recapitalization Events), issued in connection with strategic investment and/or the equisition of technology approved by the Company's Board of Directors

(D) '<u>Origi- al Issue Date</u>" shall me α Λ μ 1 6,

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- No Adjustment of Conversion Price. So adjustment in the Series C or Series D Conversion Price shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share for an Additional Share of Common issued or deemed to be issued by the Coop, ration is less than the Series C or See s. D. Conversion Price, as applicable, in ct per on the date of, an immediately prior to, such issue.
  - 3) Deeme: Issue of Additional Shares of Course on.
- (Z.) Option and Convertible Securities. In the event the Corporation at any time or flora time to time after the Original Issue Date shall save ny Option, or Convertible Securities or shall tix a record date for the determination of heafers of any class of securities entitled to receive any such Options or Convertible Securi has, then the coaximum number of shares cases to feeth in the instrume of clating thereto without cogastics any provisions contained therein for a sub-sense at all justment of such number) of Complen Stock ssual le upon the exercise of such Options or, in the case of Convertible Securities and Options hereign, the exercise of such Optibus and conversion or exchange of such Convertible Signarities bull to be ned to be Additional shatts of Common issued as of the time of such  $\mathbb{N}$  top  $\alpha$  in the view a record date shall have been fixed, as of the close of business on such releated to the toxided that Additional Shares colocial on shall not be defined to have been issue and a sine tens deration per share (determined pursua at to Section 6.2(a)(iv)(5) hereof) of such and because I have coff Common would be less that the Leries Coef Serie. D Conversion Price is safes a safe 1300 of and manediately problem ich is at or such records are, as the case may be into in the relation any such cases in Solich and Board Shales of Common are deemed to the solich as
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(II)—if such Options or Convertible
Securities by their terms provide, with the passage of time or otherwise, for any change in the
consideration payable to the Corporation, or change in the number of shares of Common Stock
issuable, upon the exercise, conversion or exchange thereof (other than under in by reason of
provisions designed to protect against dilution), a Conversion Price computed upon the original
issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent
adjustments based thereon, shall upon any such increase or decrease becoming effective, be
recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of
conversion or exchange under such Convertible Securities; and

(III) no readjustment pusuant to clause (II) above shall have the effect of increasing the Series C or Series D Conversion Price to an amount which exceeds the lower of (1) the Series C or Series D Conversion Price on the original adjustment date or (2) the Series C or Series D Conversion Price that would have resulted from any issuance of Additional Shares of Common between the original adjustment date and such readjustment date.

(B) Stock Dividends and Sub-livisions. In the event the Corporation at any time or from time to time after the Original Issue Date shall declare or pay any dividend on the Common Stock payable in Common Stock, or effect a sport or subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by reclassification or otherwise than by payment of a divident in Common Stock) then and in any such event. Additional Shares of Common shall be decimed to have been issued.

(I) in the case of any such dividend, immediately after the close of business on the record date for the determination of holders of any class of securities emitted to receive such dividend, or

(Ib) in the case of any such subdivision, at the close of business on the date immediately prior to the date upon which such corporate action becomes effective.

Additional Shares of Common. In the event this Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued purse of to Section 6.2(a)(iv)(3)) without consideration or for a consideration per share less than the Series Corporation Price in a ffection the date of and immediately prior to such is an experience price being referred to berein as the "Dattion Price"), then and in each such event the Series Corporation Crice as applicable, shall be reduced to a price to a clated to the tearest cent) determined by multiplying such Series Corporation. Series DiConversion and in addition, the numerator of which hall be the number of shares of Common Stock when the aggregate masside tation received by the Corporation for the total number of additional Science Common Stock when the aggregate masside tation received by the Corporation for the total number of additional Science Common Stock which is dependent to such assist a final better number of shares of Common Stock when the aggregate masside tation received by the Corporation for the total number of additional Science Common Stock which is a dependent of the stock of the stock and the stock of the stock

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issue plus the number of such Additional Shares of Common so issued; provided that, for the purposes of this Section 6.2(a)(iv)(4), all shares of Common Stock issuable upon conversion of all outstanding Preferred Stock, and other Convertible Securities and all outstanding Options (provided such Options have an exercise price below the Series C or Series D Conversion Price immediately prior to such issue) shall be deemed to be outstanding, and, immediately after any Additional Shares of Common are deemed issued pursuant to Section 6.2(a)(iv)(3), such Additional Shares of Common shall be deemed to be outstanding.

(5) <u>Determination of Consideration</u>. For purposes of this Section 6.2(a)(iv), the consideration received by the Corporation for the issue of any Additional Shares of Common shall be computed as follows:

(A) <u>Cash and Property</u>: Such consideration

shall:

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- (I) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation.
- (II) insofar as it consists of property other than each, be computed at the fair value thereof at the time of such issue, as determined by Board in the good faith exercise of its reasonable business judgment; and
- (III)—in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Componion for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board.
- (8) Options and Convertible Securi its. The consideration per share received by the Corporation for Additional Shares of Common decreed to have been issued pursuant to Section 6.2(a)(av), relating to Cotions and Convertible Securities, shall be determined by dividing.
- (l) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) pay, ble to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the provision or exchange of such Convertible Securities, by
- (11) One maximum number of shares of countries to kells the instead of state of the first out of the first of the instead of the control of t

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(C) Stock Dividends and Stock Subdivisions.

Any Additional Shares of Common deemed to have been issued, relating to stock dividends and stock splits or subdivisions, shall be deemed to have been issued for no consider gion

> (6)Other Adjustments to Series C and Series D

Conversion Price.

(A) Subdivisions, Combination, or

Consolidations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided, combined or consolidated, by stock split, stock dividend, combination or like event, into a greater or lesser number of shares of Common Stock after the Original Issue Date, the Series C and the Series D Conversion Price in effect animediately prior to such sub-livision, combination, consolidation or stock dividend shall, concurrently with the effectiveness of such subdivision, combination or consolidation, be proportionately adjusted.

- (B) Distributions Other Than Cash Dividends Out of Retained Earnings. In case the Corporation shall declare a cash dividend upon its Common Stock payable otherwise than out of retained earnings or shall distribute to holders of its Common Stock shares of its capital stock (other than Common Stock), stock in other securities of other persons, evidences of indebtedness issued by the Corporation or other persons assets (excluding each dividends) or options or rights (excluding options to pure use an I rights to subscribe for Common Stock or other securities of the Corporation convertible into or exchangeable for Common Stock), then, in each such case, the holders of shares of Series C and Series D Preferred Stock shall, concurrently with the distribution to holders of Common Stock, receive a like distribution based upon the numbers of shares of Common Stock is o which the Series C and Series D Preferred Stock is then convertible
- (C) Reclassifications. In the cale, at any time after the late hereof, of any capital reorganization or any reclassification of the stock of the Corporation (other than as a result of a stock dividend or subdivision, split-up or complication of shares), or Corporate Sale (other than a consolidation or merger in which the Co poration is the continuing entity and which does not result in any change in the Common Stock, the stares of the Series C and Series D Preferred Stock shall, after such reorganization, reclas dification or Corporate Sale, be convertible into the kind and number of shares of stock or oil or securities or property of the Corporation or otherwise to which such holder would have been satisfied if immediately prior to such reorganication, reclassification or Corporate Sale, the colder and converted the holder's shares of the Series Cland Series D Preferred Stock into Compact Stock. The provisions of this Section 5.2( $\phi(iv)$ -6)(C) shall similarly apply to successive res reanizations, reclassifications, consolidations or Corporate Sales.
- (b) Certificate as to Adjustments. Upon the occurrence of the h adjustment or readjustment of the Series C or Series D Conversion Price pursuage to the Section (12), the Corporation at its expense shall promptly compute such adjusting at  $\alpha$ readjusticient in accordance a leather terms have of and furnish to each holder of Series Canador So they Decrete are a stock a certificate and ling forth such as justment or readjusting a time a howing in detail Le facts, mon which such adjustment or readjustment is based. The Conjugation shall,

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upon the written request at any time of any holder of Sevies C or Series D Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price of the Series C or Series D Preferred Stock at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any of other property which at the time would be received upon the conversion of the Series C or Series D Preferred Stock.

Section 6.3 No Fractional Shares. No fractional shares of Common Stock well be issued upon conversion of Series A, Series B, Series C or Series D Preferred Stock and any fractional share which otherwise would result from conversion by a holder of all of his shares of Series A, Series B, Series C or Series D Preferred Stock will be redeemed by payment in an amount equal to such fraction of the then effective Series A, Series B, Series C or Series D Convers on Price as promptly as finds legally are available therefor.

Section 6.4 Mechanics of Conversion. Before any holder of Series A. Series B. Series C or Series D Preferred Stock will be entitled to convert the same into shares of Common Stock, he will surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A, Series B, Series C or Series D Fr. ferred Stock, and he will give written no use to the Corporation stating the name or natives in which he wishes the certificate or certificates for shares of Common Stock to be issued. The Cooperation. as soon as practicable thereafter, validissue and deliver at such office to such hotser of Series A, Series B. Series C or Series D Preferred Stock or to his nominee or nominees, a pertificate or centificales for the number of charges of Common Stock to which he will be entitled as a foresaid. Such conversion will be decided to have been made, in the event of automatic conversion, immediately prior to the close of this iness on the date of the event of conversion or, in the event of voluntary conversion, immediately prior to the close of business on the date when the Corporation receives a holder's certificate or confidences for Series A, Series B, Series Cor-Series D. Preferred Stock and any other documents or instruments required here aider or by applicable law, and the person or persons entitled to receive the shares of Commun Stock. is suable upon conversion will be t cause for all purposes as the record holder or colden of such snares of Common Stock on such late.

Section 6.5 No Impairn ent. The Corporation whether by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, merger, dissolation, assue or size of securities or any other voluntary action, will not avoid or seek to avoid the observance or purformance of any of the terms to be observed or performed hereunded by the Corporation, but to all times in good faith will assis in the corrying out or all of such action as not be a cessary corporation order to protect the conversioning this pursuant to this Section 6 of the molders of Series B. Series Coard Sories O. Preferred Stochagainst impairment.

Section 6.6. Motions of Properti Date. If the event of any taking by the Composition of a translate the hoteless of any classical sections for the pulpose of determining the holders thereof translate to receive any disciplifical forther than a cash dividend) of other disciplification, any Common Stock Equavalents of an inchito subscribe for purchase or otherwise experiments of the section of section of the contraction of the following disciplific or property, or to receive any characteristic for the Composition of the Section 3. Section 3. Section 3. Section 10. Section 3. Section 10.

at least ten (10) 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 rights, and the amount and character of such dividend, distribution or right.

Reservation of Stock Issuable Upon Conversion. The Corporation at all times will 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 Series A, Series B, Series C or Series D Preferred Stock such number of its shares of Common Stock as from true to time will be sufficient to effect the conversion of all then outstanding shares of Series A, Series B, Series C and Series D Preferred Stock; and if at any time the number of authorized but unissued shares or Common Stock is not sufficient to effect the conversion of all then outstanding shares of Series A. Series B. Series C and Series L. Preferred Stock, in addition to such other recordies as may be available to the holders of Series A, Series B, Series C and Series D Preferred Stock for such failure, the Corporation will take such corporate action as, in the opinion of its counsel may be necessary to increase its authorized but unissued shares of Common Stock to such necessary shares as will be sufficient for such purpose.

Notices Asynotices required by the provisions of this Section 6 to be Section 6.8 given to the holders of shares of Sories A. Series B, Series C or Series D Preferred Stock must be in writing and will be deemed given upon personal delivery, one day after deposit with a reputable overnight courier service for overnight delivery or after transmission by facs mile telecopier with confirmation of successful transmission, or five days after deposit in the United States mail, by registered or certified and postage prepaid, or upon actual receipt if given by any other method, addressed to each holder of such record at his address appearing on the books of the Corporation.

#### ARTICLE IV

# LIABILITY OF DIRECTORS ANDINTEMNIFICATION OF AGENTS

The liability of the directors of the Corporation for monetary damages shall be diminated to the fullest extent permissible un ler California law.

The Corporation Li authori, ed to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through bylaw provisions, agreements with agents, vote of shareholders or disinterested directors, or otherwise, in excess of the independent feation otherwise permitted by Section 31 of the California Co. porations Code, subjectionly to the applicable limits set footh in Spetie 20% of the Collifornia Corporations Code will require to actions for breach of duty to the Corporation or its shareholders.

The Corporation is authorized to indemnify the defectors and officers of  $i\mapsto Co$  - oration to the full est extent permisors our or of bifernia law.

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Any amendment, repeal or modification of any provision of this Article IV shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such amendment, repeal or modification."

- The foregoing Restated Articles have been duly approved by the Board of Direct... of the Corporation.
- The foregoing Amended and Restated Articles of Incorporation have been duly approved by the required vote of the shareholders of the Corporation in accordance with sections 603 and 903 of the California General Corporations Law. The total number of outstanding shares of the Corporation entitled to vote with respect to the foregoing Amended and Restated Articles was 5,428,437 shares of Common Stock, 611,000 shares of Series A Preferred Stock, 98,334 shares of Series B Preferred Stock and 1,071,428 shares of Series C Preferred Stock. The number of shares voting in favor of the amendment equaled or exceeded the vote required, such required vote being (i) a majority of the outstanding shares of Common Stock, (ii) a majority of the outstanding shares of Series A, Series B and Series C Preferred Stock, voting together as a class, (iii) a majority of the outstanding shares of Series B Preferred Stock voting together as a class and (iv) a major ty of the outstanding shares of Series C Preferred Stock, voting as a single class.

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We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Executed this 6 th day of April, 1998.

Louis B. Rosenberg, Presiden

Timothy A. Lacey, Chief Financial Officer

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