

BA SYSTEMS, INC.

THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

BA Systems, Inc., a corporation organized and existing under and by virtue of the Delaware General Corporation Law, hereby certifies as follows:

The name of this corporation is BA Systems, Inc. The original Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware (the "Secretary of State") on January 27, 2005, the Restated Certificate of Incorporation of the corporation was filed with the Secretary of State on February 10, 2005, the Second Restated Certificate of Incorporation of the corporation was filed with the Secretary of State on April 10, 2006, a Certificate of Amendment was filed with the Secretary of State on September 20, 2006, and a Certificate of Amendment was filed with the Secretary of State on December 20, 2006.

This Third Amended and Restated Certificate of Incorporation (the "**Restated Certificate**") has been duly adopted in accordance with the provisions of Sections 242, 245, and 228 of the General Corporation Law of the State of Delaware. The Certificate of Incorporation of the Corporation is amended and restated to read in its entirety as follows:

ARTICLE I

The name of this corporation is BA Systems, Inc. (the "**Corporation**").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III

The purpose of this Corporation is to engage in the lawful act or activity for which a corporation may be organized under the General Corporation Law of Delaware.

ARTICLE IV

A. The aggregate number of shares that the Corporation shall have authority to issue is 37,505,000 divided into 22,000,000 shares of Common Stock each with the par value of \$0.0001 per share, and 15,505,000 shares of Preferred Stock each with the par value of \$0.0001 per share. The Preferred Stock may be issued in one or more series, of which one such series shall be designated the "**Series A Preferred**" and one such series shall be designated the "**Series B Preferred**." The Series A Preferred shall consist of 5,505,000 shares. Of the Series A Preferred, 280,000 shares shall be designated as A-1 (the "**Series A-1 Preferred**") and 5,225,000 shares shall be designated as A-2 (the "**Series A-2 Preferred**"). The Series B Preferred shall consist of 10,000,000 shares. The number of shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation (voting on an as-if-converted basis).

B. The terms and provisions of the Preferred Stock are as follows, provided, however, that the holders of an aggregate of more than 50% of the then outstanding shares of the Preferred Stock (voting together as a single class on an as-converted basis) may waive any of the following rights, powers, preferences, or privileges applicable to all shares of the Preferred Stock in any given instance without prejudice to such rights, powers, preferences, or privileges in any other instance, and any such waiver shall be bind all future holders of the shares of Preferred Stock:

1. Dividends.

(a) Treatment of Preferred. The Series A Preferred and Series B Preferred shall be entitled to receive, on a pari passu basis, dividends per share of Preferred Stock (as adjusted for stock splits, combinations, reorganizations and the like) equal to 8% multiplied by the Effective Price (as defined below) of such series of Preferred Stock, as applicable, per annum, out of any assets at the time legally available therefore, when, as and if declared by the board of directors of the Corporation (the "Board"), prior and in preference to the Common Stock. No dividends other than those payable solely in Common Stock shall be paid or declared on any Common Stock or any other share of capital stock of the Corporation unless and until (i) the aforementioned dividend is paid on each outstanding share of Preferred Stock, and (ii) a dividend is paid with respect to all outstanding shares of Preferred Stock in an amount equal to or greater than the aggregate amount of dividends which would be payable on each share of Preferred Stock with such dividends calculated on an as-converted to Common Stock basis. The Board is under no obligation to declare dividends, no rights shall accrue to the holders of Preferred Stock if dividends are not declared, and any dividends declared shall be noncumulative.

(b) Effective Price. The "Effective Price" of the Series A-1 Preferred shall be \$1.7857 (as adjusted for stock splits, stock dividends, combinations, reorganizations and the like). The Effective Price of the Series A-2 Preferred shall be \$1.00 (as adjusted for stock splits, stock dividends, combinations, reorganizations and the like). The Effective Price of the Series B Preferred shall be \$1.10 (as adjusted for stock splits, stock dividends, combinations, reorganizations and the like).

(c) Consent to Certain Repurchases. As authorized by Section 402.5(c) of the General Corporation Law of California, Sections 502 and 503 of the General Corporation Law of California, to the extent otherwise applicable, shall not apply with respect to distributions made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by employees, consultants, officers and directors at a price not greater than the amount paid by such person for such shares upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, which agreements were authorized by the approval of the Board.

2. Liquidation Rights.

(a) Liquidation Preference. In the event of any Liquidation (as defined below), either voluntary or involuntary, the holders of the Series A Preferred and Series B Preferred shall be entitled to receive, on a pari passu basis, out of the assets of the Corporation, the Liquidation Preference for each share of Preferred Stock before any payment shall be made or any assets distributed to the holders of Common Stock. "Liquidation Preference" shall mean, with

respect to a share of a series of Preferred Stock, an amount equal to the Effective Price per share of such series of Preferred Stock (as adjusted for stock splits, stock dividends, combinations, reorganizations and the like) plus declared but unpaid dividends on such share. If upon the Liquidation, the assets to be distributed among the holders of the Preferred Stock are insufficient to permit the payment to such holders of the full Liquidation Preference for their shares, then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and pro rata among the holders of the Preferred Stock in proportion to the full preferential amounts each such holder is otherwise entitled to receive.

(b) Remaining Assets.

(i) After the payment to the holders of Preferred Stock of the full preferential amounts specified above and any other payment to any series of Preferred Stock authorized after the date of filing this Restated Certificate, any remaining assets of the Corporation shall be distributed with equal priority and pro rata among the holders of the Corporation's Common Stock and Preferred Stock, based on the number of shares of Common Stock held by each, treating in such circumstances the Preferred Stock as if it had been converted into Common Stock at the then applicable conversion rate(s), until such time as an aggregate of \$50,000,000 in proceeds has been distributed to the holders pursuant to Section 2(a) above and this Section 2(b)), at which point no further payments shall be made to the holders of Preferred Stock by reason thereof and any remaining assets of the Corporation shall be distributed with equal priority and pro rata among the holders of the Corporation's Common Stock.

(ii) Notwithstanding the above, for purposes of determining the amount each holder of shares of Preferred Stock is entitled to receive with respect to a Liquidation, each such holder of shares of Preferred Stock shall be deemed to have converted (regardless of whether such holder actually converted) such holder's shares of Preferred Stock into shares of Common Stock immediately prior to the Liquidation at the conversion rate then in effect, if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such shares of Preferred Stock into shares of Common Stock. If any such holder shall be deemed to have converted shares of Preferred Stock into Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of Preferred Stock that have not converted (or have not been deemed to have converted) into shares of Common Stock.

(c) Liquidation. A "**Liquidation**" shall be deemed to be occasioned by, or to include, (i) the liquidation, dissolution or winding up of the Corporation; (ii) the acquisition of the Corporation by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) provided that the applicable transaction shall not be deemed a liquidation unless the Corporation's stockholders constituted immediately prior to such transaction hold less than 50% of the voting securities of the surviving or acquiring entity; (iii) a sale of all or substantially all of the assets of the Corporation; (iv) an exclusive, irrevocable licensing of all or substantially all of the Corporation's intellectual property to a third party or (v) the transfer by means of any transaction or series of related transactions to a person or group of affiliated persons (other than an underwriter of this Corporation's securities), of this Corporation's securities if, after such transfer, such person or group of affiliated persons would

hold 50% or more of the outstanding voting stock of this Corporation. Notwithstanding the foregoing, the sale of shares of Series B Preferred pursuant to that certain Series B Preferred Stock Purchase Agreement dated on or about the date hereof (the "**Purchase Agreement**") shall not be deemed a Liquidation. The holders of a majority of the outstanding Preferred Stock, voting on an as-converted basis and as a single class, may waive their liquidation rights under Sections 2(a) and 2(b) with respect to a liquidation as defined in Sections 2(c)(ii)-(v).

(d) Shares not Treated as Both Preferred Stock and Common Stock in any Distribution. Shares of Preferred Stock shall not be entitled to be converted into shares of Common Stock in order to participate in any distribution, or series of distributions, as shares of Common Stock, without first foregoing participation in the distribution, or series of distributions, as shares of Preferred Stock.

(e) Determination of Value if Proceeds Other than Cash. In any Liquidation, if the proceeds received by the Corporation or its stockholders are other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability covered by (ii) below:

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

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

(C) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors of the Corporation (including the Preferred Director (as defined below)).

(ii) The method of valuation of securities subject to 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 (i) (A), (B) or (C) to reflect the approximate fair market value thereof, as determined by the Board of Directors of the Corporation (including the Preferred Director (as defined below)).

3. Conversion. The Preferred Stock shall have conversion rights as follows:

(a) Right to Convert. Each share of 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 the Preferred Stock. Each share of Series A-1 Preferred shall be convertible into that number of fully-paid and nonassessable shares of Common Stock that is equal to \$1.7857 divided by the Series A-1 Conversion Rate (as hereinafter defined). Upon the filing of this Restated Certificate, the "**Series A-1 Conversion Rate**" shall be \$1.00,

and shall be subject to adjustment as provided herein. Each share of Series A-2 Preferred shall be convertible into that number of fully-paid and non-assessable shares of Common Stock equal to \$1.00 divided by the Series A-2 Conversion Rate (as hereinafter defined). Upon the filing of this Restated Certificate, the "**Series A-2 Conversion Rate**" shall be \$1.00, and shall be subject to adjustment as provided herein. Each share of Series B Preferred shall be convertible into that number of fully-paid and non-assessable shares of Common Stock equal to \$1.10 divided by the Series B Conversion Rate (as hereinafter defined). Upon the filing of this Restated Certificate, the "**Series B Conversion Rate**" shall be \$1.10, and shall be subject to adjustment as provided herein. The Series A-1 Conversion Rate, the Series A-2 Conversion Rate and the Series B Conversion Rate are collectively referred to herein as the "**Preferred Conversion Rate**".

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective applicable Preferred Conversion Rate immediately upon (1) the affirmative vote of more than 50% of the Preferred Stock (voting as a single class on an as-converted basis), or (2) the consummation of a firmly underwritten public offering pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), on Form S-1 (as defined in the Securities Act) or any successor form, provided, however, that (i) the per share price to the public is not less than \$3.30 (as adjusted for stock splits, stock dividends, combinations, reorganizations and the like), and (ii) the aggregate gross proceeds to the Corporation are greater than \$20,000,000.

(c) **Mechanics of Conversion.** No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay the fair market value cash equivalent of such fractional share as determined by the Board. For such purpose, all shares of Preferred Stock held by each holder shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, he shall surrender the Preferred Stock certificate or certificates, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert such shares; provided, however, that in the event of an automatic conversion pursuant to Section 3(b) above, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided further, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above.

The Corporation shall, as soon as practicable after delivery of the Preferred Stock certificates, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared but unpaid dividends on the converted Preferred Stock. 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 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 on such date; provided, however, that if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of the sale of such securities.

(d) Adjustments to Conversion Rate.

(i) Adjustments for Subdivisions or Combinations of Common. After the date of the filing of this Restated Certificate, if the outstanding shares of Common Stock shall be subdivided (by stock split, stock dividend or otherwise), into a greater number of shares of Common Stock, the Preferred Conversion Rate in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. After the date of the filing of this Restated Certificate, if the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Preferred Conversion Rate in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(ii) Adjustments for Reclassification, Exchange and Substitution. If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), the applicable Preferred Conversion Rate then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the applicable series of Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of such series of Preferred Stock immediately before that change.

(iii) Adjustments for Dilutive Issuances.

(A) After the date of the filing of this Restated Certificate, if the Corporation shall issue or sell any shares of Common Stock (as actually issued or, pursuant to paragraph (C) below, deemed to be issued) for a consideration per share less than the applicable Preferred Conversion Rate in effect immediately prior to such issue or sale, then immediately upon such issue or sale the applicable Preferred Conversion Rate shall be reduced to a price (calculated to the nearest cent) determined by multiplying such prior Preferred Conversion Rate by a fraction, the numerator of which shall be the number of shares of "Calculated Securities" (defined below) outstanding immediately prior to such issue or sale plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of shares of Common Stock so issued or sold would purchase at such prior Preferred Conversion Rate, and the denominator of which shall be the number of shares of Calculated Securities outstanding immediately prior to such issue or sale plus the number of shares of

Common Stock so issued or sold. "**Calculated Securities**" means (i) all shares of Common Stock actually outstanding; (ii) all shares of Common Stock issuable upon conversion of the then outstanding Preferred Stock (without giving effect to any adjustments to the Conversion Rate of any series of Preferred Stock as a result of such issuance); and (iii) all shares of Common Stock issuable upon exercise and/or conversion of outstanding options to purchase shares of stock.

(B) For the purposes of paragraph (A) above, none of the following issuances shall be considered the issuance or sale of Common Stock:

(1) The issuance of Common Stock upon the conversion of any then-outstanding Convertible Securities. "**Convertible Securities**" shall mean any bonds, debentures, notes or other evidences of indebtedness, and any warrants, shares (including, but not limited to, shares of Preferred Stock) or any other securities convertible into, exercisable for, or exchangeable for Common Stock.

(2) The issuance of up to 3,380,000 shares of Common Stock (or options to purchase shares of Common Stock) (as adjusted for stock splits, stock dividends, combinations, reorganizations and the like), or such larger number of shares as approved by a majority of the Board, including the Preferred Director, as defined in Article IV, Section 4(d) below, issued to employees, directors, consultants and other service providers for the primary purpose of soliciting or retaining their services pursuant to plans or agreements approved by the Board, including the Preferred Director.

(3) The issuance of shares of Common Stock or Convertible Securities to lenders, financial institutions, equipment lessors, or real estate lessors to the Corporation in connection with a bona fide borrowing or leasing transaction approved by the Board, including the Preferred Director.

(4) The issuance of Common Stock or Convertible Securities pursuant to the bona fide acquisition of another business by the Corporation by merger, purchase of substantially all of the assets or shares, or other reorganization approved by the Board (including the Preferred Director).

(5) The issuance of Common Stock pursuant to a stock split, stock dividend, recapitalization or other similar reorganization.

(6) The issuance of Common Stock issued or issuable pursuant to strategic transactions entered into for primarily non-equity financing purposes, approved by the Board, including the Preferred Director.

(C) For the purposes of paragraph (A) above, the following subparagraphs 1 to 3, inclusive, shall also be applicable:

(1) In case at any time the Corporation shall grant any rights to subscribe for, or any rights or options to purchase, Convertible Securities, whether or not such rights or options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the

exercise of such rights or options or upon conversion or exchange of such Convertible Securities (determined by dividing (x) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such rights or options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of such rights or options, plus, in the case of any such rights or options which relate to such Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (y) the total maximum number of shares of Common Stock issuable upon the exercise of such rights or options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such rights or options) shall be less than the applicable Preferred Conversion Rate in effect immediately prior to the time of the granting of such rights or options, then the total maximum number of shares of Common Stock issuable upon the exercise of such rights or options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such rights or options shall (as of the date of granting of such rights or options) be deemed to be outstanding and to have been issued for such price per share.

(2) In case at any time the Corporation shall issue or sell any Convertible Securities, whether or not the rights to exchange or convert thereunder are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (x) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (y) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the applicable Preferred Conversion Rate in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of such Convertible Securities shall (as of the date of the issue or sale of such Convertible Securities) be deemed to be outstanding and to have been issued for such price per share, provided that if any such issue or sale of such Convertible Securities is made upon exercise of any rights to subscribe for or to purchase or any option to purchase any such Convertible Securities for which adjustments of the applicable Preferred Conversion Rate have been or are to be made pursuant to other provisions of this paragraph (C), no further adjustment of such Preferred Conversion Rate shall be made by reason of such issue or sale.

(3) In case at any time any shares of Common Stock or Convertible Securities or any rights or options to purchase any such Common Stock, or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor. In case any shares of Common Stock or Convertible Securities or any rights or options to purchase any such Common Stock or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined by the Board.

(e) Certificate of Adjustments. Upon the occurrence of each adjustment of the any Preferred Conversion Rate pursuant to this Section 3, the Corporation shall, upon the written request of any holder of such Preferred Stock, furnish to such holder a certificate setting forth (i) any and all adjustments made to such Preferred Stock since the date of the first issuance of Preferred Stock, (ii) the applicable Preferred Conversion Rate 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 such Preferred Stock.

(f) Notices of Record Date. In the event that the Corporation shall propose at any time (i) to declare any dividend or distribution; (ii) to offer for subscription to the holders of any class or series of its stock any additional shares of stock or other rights; (iii) to effect any reclassification or recapitalization; or (iv) to effect a Liquidation; then, in connection with each such event, the Corporation shall send to the holders of the Preferred Stock at least 20 days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in clauses (iii) and (iv) above.

(g) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the 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 Preferred Stock, the 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 purpose.

4. Voting.

(a) Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(b) Preferred Stock. Each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock held by such holder of Preferred Stock could then be converted. The holders of shares of the Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. The holders of the Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted), shall be disregarded. Where the Series A Preferred is entitled to vote as a separate class, the Series A-1 Preferred and the Series A-2 Preferred shall vote together as a single class and not as separate classes and on an as-converted basis, except as required by law.

(c) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of this corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

(d) Election of Directors. The holders of the Preferred Stock, voting separately as a single class, shall be entitled to elect one (1) director (the "**Preferred Director**"). The holders of the Common Stock, voting separately as a single class, shall be entitled to elect one (1) director (the "**Common Director**"). The holders of the Common Stock and the Preferred Stock, voting together as a single class and on an as-converted basis, shall be entitled to elect all other directors of the Corporation. Any vacancies on the Board shall be filled by vote of the holders of the class that elected the director whose absence created such vacancy. There shall be no cumulative voting.

5. Amendments and Changes.

(a) Approval by Preferred Stock. Notwithstanding Section 4 above, the Corporation shall not, nor shall it permit any subsidiary of the Corporation (a "**Subsidiary**") to (directly or indirectly, by amendment, merger, consolidation or otherwise), without first obtaining the approval (by vote or written consent as provided by law) of more than 50% of the Preferred Stock then outstanding, voting together as a single, separate class and on an as-converted basis:

(i) create or issue (directly or indirectly, by merger or otherwise) any securities of the Corporation (including, without limitation, any other security convertible into or exercisable for any such security) having rights, preferences or privileges which are senior to, or *pari passu* with, any of the rights, preferences or privileges of the Preferred Stock;

(ii) pay or declare a dividend on any shares of the Corporation's capital stock or the capital stock of any Subsidiary;

(iii) redeem, repurchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) shares of the Corporation's or any Subsidiary's capital stock except in connection with the repurchase of shares at cost issued to or held by employees, consultants, officers and directors upon termination of their employment or services or pursuant to agreements providing for the right of said repurchase or right of first refusal;

(iv) consummate or authorize any Liquidation or any other liquidation or dissolution transaction of the Corporation or any Subsidiary;

(v) increase or decrease the number of shares of Preferred Stock or Common Stock that the Corporation or any Subsidiary shall have the authority to issue;

(vi) adversely change the rights, privileges or preferences expressly afforded the Preferred Stock, or effect a merger, business combination, or other corporate transaction or series of related transactions pursuant to which the rights, preferences or privileges of the Preferred Stock will be adversely changed or pursuant to which the Preferred Stock will be exchanged for new securities with different rights, preferences, privileges or preferences;

(vii) amend this Restated Certificate or the bylaws of the Corporation or amend the charter documents of any Subsidiary;

(viii) change the authorized number of directors of the Corporation or any Subsidiary;

(ix) incur debt whether individually or in the aggregate in excess of \$100,000;

(x) allow the capital stock of any Subsidiary to be owned by any person or entity other than the Corporation, except where required by law, unless approved by the Board, including the Preferred Director; or

(xi) permit the transfer, sale or exclusive license of the intellectual property or material assets of any Subsidiary, unless approved by the Board, including the Preferred Director, except in the ordinary course of business consistent with the operational plan approved by the Board, including the Preferred Director.

6. Redemption. The Preferred Stock is not redeemable.

7. Notices. Any notice required by the provisions of this Article IV to be given to the holders of Preferred Stock shall be deemed given if given in accordance with the bylaws of the Corporation.

ARTICLE V

The Board shall have the power to adopt, amend and repeal the bylaws of the Corporation (except insofar as the bylaws of the Corporation as adopted by action of the stockholders of the Corporation shall otherwise provide). Any bylaws made by the directors under the powers conferred hereby may be amended or repealed by the directors or by the stockholders, and the powers conferred in this Article V shall not abrogate the right of the stockholder to adopt, amend and repeal bylaws.

ARTICLE VI

Election of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

ARTICLE VII

The Corporation reserves the right to amend the provisions in this Restated Certificate and in any certificate amendatory hereof in the manner now or hereafter prescribed by law, and all rights conferred on stockholders or others hereunder or thereunder are granted subject to such reservation.

ARTICLE VIII

(a) To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, no director of the Corporation shall be personally

liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article VIII to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law as so amended.

(b) The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer or employee of the Corporation or any predecessor of the Corporation or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation to the same extent as permitted under subparagraph (a) above.

(c) Neither any amendment nor repeal of this Article VIII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VIII, shall eliminate or reduce the effect of this Article VIII in respect of any matter occurring or any action or proceeding accruing or arising or that, but for this Article VIII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

(d) The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

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IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed by its authorized officer this 25th day of January, 2007.

BA SYSTEMS, INC.

/s/ Douglas Spreng
By: Douglas Spreng
Chief Executive Officer

Signature Page to Restated Certificate of BA Systems, Inc.