

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 10-Q**

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**  
For the quarterly period ended March 31, 2003

**OR**

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

**Commission File No.: 0-22693**

**InfoTech USA, Inc.**  
(formerly SysComm International Corporation)  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**11-2889809**  
(I.R.S. Employer  
Identification No.)

**7 Kingsbridge Road, Fairfield, New Jersey 07004**  
(Address of principal executive offices) (Zip code)

Registrant's telephone number, including area code: **(973) 227-8772**

Indicate by check mark (✓) whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark (✓) whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

The number of shares outstanding of each class of our common equity as of May 9, 2003 is as follows:

Class of Common Equity  
Common Stock, par value \$.01

Number of Shares  
4,895,998

**INFOTECH USA, INC.**  
(FORMERLY SYSCOMM INTERNATIONAL CORPORATION)

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PART I FINANCIAL INFORMATION  
ITEM 1. FINANCIAL STATEMENTS

**INFOTECH USA, INC. AND SUBSIDIARIES**  
**CONSOLIDATED CONDENSED BALANCE SHEETS**

(In thousands except par value)

<u>Assets</u>		
	<u>March 31, 2003</u>	<u>September 30, 2002</u>
<b>Current Assets</b>	<b>(Unaudited)</b>	
Cash and cash equivalents	\$ 2,024	\$ 3,398
Accounts receivable (net of allowance for doubtful accounts of \$124 and \$208)	1,982	1,913
Inventories	58	91
Deferred tax assets	13	42
Other current assets	302	135
<b>Total Current Assets</b>	<b>4,379</b>	<b>5,579</b>
Property, equipment and improvements, net	422	524
Goodwill, net	2,154	2,154
Other assets	1,844	1,500
<b>Total Assets</b>	<b>\$ 8,799</b>	<b>\$ 9,757</b>
<b><u>Liabilities and Stockholders' Equity</u></b>		
<b>Current Liabilities</b>		
Current maturities of capital lease obligation	\$ 21	\$ 21
Amounts due to Parent Company	111	127
Accounts payable	133	190
Accrued expenses and other liabilities	793	1,160
<b>Total Current Liabilities</b>	<b>1,058</b>	<b>1,498</b>
Capital lease obligation	11	21
<b>Total Liabilities</b>	<b>1,069</b>	<b>1,519</b>
<b>Commitments and Contingencies</b>		
<b>Stockholders' Equity</b>		
Preferred shares:		
Authorized 5,000 shares, no par value; none issued	-	-
Common shares:		
Authorized 80,000 shares of \$.01 par value; 5,757 shares issued; 4,896 shares outstanding	58	58
Additional paid-in capital	6,653	6,653
Retained earnings	1,937	2,445
Treasury stock (861 shares, carried at cost)	(918)	(918)
<b>Total Stockholders' Equity</b>	<b>7,730</b>	<b>8,238</b>
<b>Total Liabilities and Stockholders' Equity</b>	<b>\$ 8,799</b>	<b>\$ 9,757</b>

See the accompanying notes to consolidated condensed financial statements.

**INFOTECH USA, INC. AND SUBSIDIARIES**  
**CONSOLIDATED CONDENSED STATEMENTS OF OPERATIONS**  
(In thousands except per share data)  
(Unaudited)

	For The Three Months Ended March 31,		For The Six Months Ended March 31,	
	<u>2003</u>	<u>2002</u>	<u>2003</u>	<u>2002</u>
<b>Revenues:</b>				
Product revenue	\$ 1,934	\$ 9,694	\$ 4,320	\$ 14,290
Service revenue	600	811	1,094	1,556
Total revenues	<u>2,534</u>	<u>10,505</u>	<u>5,414</u>	<u>15,846</u>
<b>Cost of sales:</b>				
Cost of products sold	1,648	8,734	3,615	12,795
Cost of services sold	399	406	667	774
Total cost of products and services sold	<u>2,047</u>	<u>9,140</u>	<u>4,282</u>	<u>13,569</u>
<b>Gross profit</b>	<u>487</u>	<u>1,365</u>	<u>1,132</u>	<u>2,277</u>
Selling, general and administrative expenses	887	1,184	1,830	2,412
Depreciation and amortization	55	74	112	137
<b>(Loss) income from operations</b>	<u>(455)</u>	<u>107</u>	<u>(810)</u>	<u>(272)</u>
Other expense (income)	2	(1)	-	(1)
Interest expense	3	71	10	159
<b>(Loss) income before income tax (benefit) expense</b>	<u>(460)</u>	<u>37</u>	<u>(820)</u>	<u>(430)</u>
Income tax (benefit) expense	(171)	16	(312)	(171)
<b>Net (loss) income available to common stockholders</b>	<u>\$ (289)</u>	<u>\$ 21</u>	<u>\$ (508)</u>	<u>\$ (259)</u>
<b>Net (loss) income per common share – basic</b>	<u>\$ (0.06)</u>	<u>\$ 0.00</u>	<u>\$ (0.10)</u>	<u>\$ (0.05)</u>
<b>Weighted average number of common shares outstanding – basic</b>	<u>4,896</u>	<u>4,896</u>	<u>4,896</u>	<u>4,896</u>

See the accompanying notes to consolidated condensed financial statements.

**INFOTECH USA, INC. AND SUBSIDIARIES**  
**CONSOLIDATED CONDENSED STATEMENT OF STOCKHOLDERS' EQUITY**  
**For the Six Month Period Ended March 31, 2003**  
(In Thousands)  
(Unaudited)

	<u>Preferred Stock</u>		<u>Common Stock</u>		<u>Additional</u>	<u>Retained</u>	<u>Treasury Stock</u>		<u>Total</u>
	<u>Number</u>	<u>Amount</u>	<u>Number</u>	<u>Amount</u>	<u>Paid-In</u>	<u>Earnings</u>	<u>Number</u>	<u>Amount</u>	<u>Stockholders'</u>
					<u>Capital</u>				<u>Equity</u>
<b>Balance, October 1, 2002</b>	-	\$ -	5,757	\$ 58	\$ 6,653	\$ 2,445	(861)	\$ (918)	\$ 8,238
Net loss	-	-	-	-	-	(508)	-	-	(508)
<b>Balance, March 31, 2003</b>	-	\$ -	5,757	\$ 58	\$ 6,653	\$ 1,937	(861)	\$ (918)	\$ 7,730

See the accompanying notes to consolidated condensed financial statements.

**INFOTECH USA, INC. AND SUBSIDIARIES**  
**CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS**

(In Thousands)  
(Unaudited)

	For The Six Months Ended March 31,	
	<u>2003</u>	<u>2002</u>
<b>Cash flows from operating activities</b>		
Net loss	\$ (508)	\$ (259)
Adjustments to reconcile net loss to cash provided by (used in) operating activities		
Depreciation and amortization	112	137
Deferred income taxes	(312)	(171)
Change in assets and liabilities:		
(Increase) decrease in accounts receivable	(69)	5,654
Decrease (increase) in inventories	33	(269)
(Increase) decrease in other current assets	(185)	128
(Increase) decrease in other assets	(3)	4
Decrease in accounts payable and accrued expenses	(424)	(3,200)
<b>Net cash (used in) provided by operating activities</b>	<b>(1,356)</b>	<b>2,024</b>
<b>Cash flows from investing activities</b>		
Capital expenditures	(10)	(36)
Payments received on notes receivable	18	25
Proceeds from disposition of property and equipment	-	2,441
<b>Net cash provided by investing activities</b>	<b>8</b>	<b>2,430</b>
<b>Cash flows from financing activities</b>		
Payments on capital lease obligation and long term debt	(10)	(995)
Net payments on Parent Company line of credit	(16)	(510)
<b>Net cash used in financing activities</b>	<b>(26)</b>	<b>(1,505)</b>
<b>Net (decrease) increase in cash and cash equivalents</b>	<b>(1,374)</b>	<b>2,949</b>
<b>Cash and cash equivalents - beginning of period</b>	<b>3,398</b>	<b>1,811</b>
<b>Cash and cash equivalents - end of period</b>	<b>\$ 2,024</b>	<b>\$ 4,760</b>

See accompanying notes to consolidated condensed financial statements.

**INFOTECH USA, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**  
**(In thousands, except per share data)**  
**(Unaudited)**

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**1. Basis of Presentation**

In the opinion of management, the accompanying unaudited consolidated condensed financial statements reflect all adjustments, consisting of normal recurring accruals, necessary to present fairly the financial position of InfoTech USA, Inc. (formerly SysComm International Corporation) (the "Company") and its wholly-owned subsidiaries, as of March 31, 2003, their results of operations for the three and six months ended March 31, 2003 and 2002, their changes in stockholders' equity for the six months ended March 31, 2003 and their cash flows for the six months ended March 31, 2003 and 2002. Information included in the consolidated condensed balance sheet as of September 30, 2002 has been derived from the audited consolidated balance sheet included in the Company's Annual Report on Form 10-K for the year ended September 30, 2002 (the "10-K") previously filed with the Securities and Exchange Commission (the "SEC"). Pursuant to the rules and regulations of the SEC, certain information and disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted from these consolidated condensed financial statements unless significant changes have taken place since the end of the most recent fiscal year. Accordingly, these unaudited consolidated condensed financial statements should be read in conjunction with the consolidated financial statements, notes to consolidated financial statements and the other information in the 10-K.

The consolidated results of operations for the three and six months ended March 31, 2003 are not necessarily indicative of the results to be expected for the full year ending September 30, 2003.

**2. Principles of Consolidation**

The financial statements include the accounts of the Company and its wholly owned subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation.

**3. Inventory**

Inventory at March 31, 2003 and September 30, 2002 consists of:

	<b>March 31, 2002</b>	<b>September 30, 2002</b>
Finished goods	\$ 97	\$ 169
Allowance for excess and obsolescence	(39)	(78)
	<u>\$ 58</u>	<u>\$ 91</u>

**4. Loss Per Share**

As further explained in Note 1 of the notes to the Company's audited financial statements included in the 10-K previously filed with the SEC, the Company presents basic earnings (loss) per share and, if appropriate, diluted earnings per share in accordance with the provisions of Statement of Financial Accounting Standards No. 128, "Earnings per Share".

Since the Company had net losses for the three and six months ended March 31, 2003 and 2002, the assumed effects of the exercise of employee stock options for the purchase of 4,660 and 2,794 common shares at March 31, 2003 and 2002, respectively, and warrants for the purchase of 300 common shares at \$0.5775 per share outstanding at March 31, 2003 would have been anti-dilutive.

**5. Stock-Based Compensation**

The Company continues to measure compensation cost related to stock options issued to employees using the intrinsic value method of accounting prescribed by Accounting Principles Board Opinion No. 25 ("APB 25"),

**INFOTECH USA, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**  
(In thousands, except per share data)  
(Unaudited)

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“Accounting For Stock Issued To Employees.” The Company has adopted the disclosure-only provisions of Statement of Financial Accounting Standards No. 123 (“SFAS 123”), “Accounting For Stock-Based Compensation.” Accordingly, no earned or unearned compensation cost was recognized in the accompanying consolidated condensed financial statements for the stock options granted by the Company to its employees since all of those options have been granted at exercise prices that equaled or exceeded the market value at the date of grant. The Company's historical net income (loss) and income (loss) per common share and pro forma net income (loss) and income (loss) per common share assuming compensation cost had been determined in 2003 and 2002 based on the fair value at the grant date for all awards by the Company consistent with the provisions of SFAS 123 are set forth below:

	<b>Three Months Ended March 31,</b>		<b>Six Months Ended March 31,</b>	
	<b><u>2003</u></b>	<b><u>2002</u></b>	<b><u>2003</u></b>	<b><u>2002</u></b>
Net (loss) income - as reported	\$(289)	\$21	\$(508)	\$(259)
Deduct total stock-based employee compensation expense determined under a fair value based method for all awards, net of related tax effects	(23)	(25)	(45)	(50)
Net loss - pro forma	<u>\$(312)</u>	<u>\$(4)</u>	<u>\$(553)</u>	<u>\$(309)</u>
Net loss per share:				
Basic - as reported	\$(.06)	\$ -	\$(.10)	\$(.05)
Basic - pro forma	\$(.06)	\$ -	\$(.11)	\$(.06)



## **ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

This discussion should be read in conjunction with the accompanying consolidated condensed financial statements and related notes in Item 1 of this report as well as our Annual Report on Form 10-K for the year ended September 30, 2002. Certain statements made in this report may contain forward-looking statements. For a description of risks and uncertainties relating to such forward-looking statements, see the Forward-Looking Statements and Associated Risk section later in this Item.

### **RECENT DEVELOPMENTS**

#### **Headcount Reductions**

Due to market conditions resulting in weak sales and reduced margins and in an effort to reduce expenses and improve profitability, we reduced portions of our workforce in October 2002, January 2003 and again in March 2003 by a total of 13 employees. There was no significant impact on the results of operations in the first quarter as a result of these reductions, however, the current quarter was negatively affected as a result of severance payments totaling \$147,000. We expect annual savings in salary and benefit costs of approximately \$900,000 as a result of these reductions.

#### **New Chief Executive Officer Named**

On March 10, 2003, Kevin McLaughlin resigned as chief executive officer and Jerome C. Artigliere was named chief executive officer.

#### **Resignation of Chairman and Chief Executive Officer**

On April 3, 2003, Jerome C. Artigliere resigned as chairman and chief executive officer. Kevin McLaughlin was appointed chairman, and Sebastian F. Perez was named chief operating officer and will act as president and chief executive officer until our Board of Directors appoints a new president and chief executive officer.

#### **New Member of the Board of Directors Appointed**

On April 3, 2003 J. Robert Patterson was appointed to the Board of Directors.

#### **Name Change**

On March 27, 2003, our stockholders approved an amendment to our certificate of incorporation changing our name to InfoTech USA, Inc.

### **BUSINESS DESCRIPTION**

*(in \$'000 unless otherwise noted)*

We are a Delaware corporation incorporated in 1997. Through our two wholly-owned subsidiaries, Information Technology Services, Inc., and InfoTech USA, Inc., we provide professional services in the area of systems integration, information technology procurement and logistics, and technology strategy in the New York City metropolitan area and New Jersey. We are a full service provider of information technology solutions and products. We specialize in tailoring our approach to the individual customer needs of medium to large size entities. We provide information technology consulting, networking, procurement, deployment, integration, migration and security services and solutions. We also provide on-going system and network maintenance services. We are controlled by our 53% majority stockholder, Applied Digital Solutions, Inc.

### **RESULTS OF OPERATIONS**

We operate in a highly competitive industry, which in turn places constant pressures on maintaining gross profit margins. Many of our sales are high volume equipment sales, which produce lower than average gross profit margins, but are often accompanied by a service arrangement which yields higher than average gross profit margins.

The following table sets forth, for the periods indicated, the percentage relationship to total revenue of certain items in our consolidated condensed statements of operations.

	Relationship to Revenue			
	Three Months Ended		Six Months Ended	
	March 31,		March 31,	
	<u>2003</u>	<u>2002</u>	<u>2003</u>	<u>2002</u>
	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
Product revenue	76.3	92.3	79.8	90.2
Service revenue	23.7	7.7	20.2	9.8
Total revenue	100.0	100.0	100.0	100.0
Cost of products sold	65.0	83.1	66.8	80.7
Cost of services sold	15.8	3.9	12.3	4.9
Total cost of products and services sold	80.8	87.0	79.1	85.6
Gross profit	19.2	13.0	20.9	14.4
Selling, general and administrative expenses	35.0	11.3	33.8	15.2
Depreciation and amortization	2.1	0.7	2.1	0.9
(Loss) income from operations	(17.9)	1.0	(15.0)	(1.7)
Other expense (income)	0.1	(0.0)	0.0	(0.0)
Interest expense	0.2	0.6	0.1	1.0
Loss (income) before income tax (benefit) expense	(18.2)	0.4	(15.1)	(2.7)
Income tax (benefit) expense	(6.8)	0.2	(5.7)	(1.1)
Net (loss) income available to common stockholders	(11.4)	0.2	(9.4)	(1.6)

**Three Months Ended March 31, 2003 Compared to the Three Months Ended March 31, 2002**  
*(in \$ '000 unless otherwise noted)*

Revenue for the second quarter of fiscal 2003 decreased \$7,971, or 75.9% from \$10,505 for the second quarter of 2002. The majority of the decrease was due to two large customers that had one-time orders in the quarter ended March 31, 2002. The sales to the two customers were primarily product sales and were in excess of \$5,300. Additionally, revenue decreased as a result of a continued soft market in both product sales and service sales combined with our decision in April 2002 to cease selling some of our lower margin computer hardware and focus on the higher margin products and related technical services. Product revenue for the three months ended March 31, 2003 decreased \$7,760, or 80.0% and service revenue decreased \$211, or 26.0% from the same period last year.

Gross profit declined by \$878, or 64.3% in the second quarter of fiscal year 2003 to \$487 from \$1,365 in the second quarter of fiscal year 2002. The decrease in gross profit was primarily due to the overall decrease in revenue. However, overall gross margin increased from 13.0% in the second quarter of 2002 to 19.2% in the second quarter of 2003. This was primarily a result of our strategy to cease selling some of our lower margin computer hardware and to focus our efforts on selling higher margin products as well as on increasing the proportion of higher margin technical services sales. Product gross margin rose to 14.8% for the quarter ended March 31, 2003 compared to 9.9% for the same quarter last year. Service gross margin declined to 33.5% for the quarter ended March 31, 2003 from 49.9% for the quarter ended March 31, 2002, primarily due to the underutilization of high-end technical service personnel.

Selling, general and administrative expenses were \$887 for the quarter ended March 31, 2003, down \$297, or 25.1%, from the \$1,184 reported for the same period last year. The decrease of \$297 in for the quarter was offset by severance payments of \$147. The reduction in expense was primarily due to headcount reduction, the elimination of expenses related to the Shirley, New York facility, which was sold in January 2002, reduced commissions on lower sales and other cost control programs.

Depreciation and amortization expense for the current quarter was \$55, a decrease of \$19 or 25.7%, from \$74 reported for the same quarter last year. Interest expense for the quarter ended March 31, 2003 was \$3 compared to \$71 for the same quarter last year. This decrease was due to the payoff of the mortgage on the Shirley, New York facility in January of 2002 and the repayment of certain notes to Applied Digital Solutions in August of 2002.

Loss from operations for the quarter ended March 31, 2003 was \$455 compared to a profit from operations of \$107 for the same quarter last year. Loss before income taxes for the quarter was \$460 compared to a profit before tax of \$37 for the quarter ended March 31, 2002. Our effective tax rate for the current quarter was 37.2% compared to 43.2% for the same quarter last year.

Our net loss for the quarter ended March 31, 2003 was \$289 compared to a net profit of \$21 reported the same period last year.

### **Six Months Ended March 31, 2003 Compared to the Six Months Ended March 31, 2002**

*(in \$'000 unless otherwise noted)*

Revenue for the six months ended March 31, 2003 decreased \$10,432 or 65.8% from \$15,846 for the six months ended March 31, 2002. The majority of the decrease was due to two large customers that had one-time orders in the quarter ended March 31, 2002. The sales to the two customers were primarily product sales and were in excess of \$5,300. Additionally, revenue decreased as a result of a continued soft market in both product sales and service sales combined with our decision in April 2002 to cease selling some of our lower margin computer hardware and focus on the higher margin products and related technical services. Product revenue for the six months ended March 31, 2003 decreased \$9,970, or 69.8% and service revenue decreased \$462, or 29.7% from the same period last year.

Gross profit declined by \$1,145, or 50.3% in the first six months of fiscal year 2003 to \$1,132 from \$2,277 in the first six months of fiscal year 2002. The decrease in gross profit was primarily due to the overall decrease in revenue. However, overall gross margin increased from 14.4% in the first six months of fiscal 2002 to 20.9% in the first six months of 2003. This was primarily a result of our strategy to cease selling some of our lower margin computer hardware and to focus our efforts on selling higher margin products as well as on increasing the proportion of higher margin technical services sales. Product gross margin rose to 16.3% for the six months ended March 31, 2003 compared to 10.5% for the same period last year. Service gross margin declined to 39.0% for the six months ended March 31, 2003 from 50.3% for the six months ended March 31, 2002, primarily due to the underutilization of high-end technical service personnel.

Selling, general and administrative expenses were \$1,830 for the six months ended March 31, 2003, down \$582, or 24.1%, from the \$2,412 reported for the same period last year. The decrease of \$582 in for the six months was somewhat offset by severance payments of \$147. The reduction in expense was primarily due to headcount reduction, the elimination of expenses related to the Shirley, New York facility, which was sold in January 2002, reduced commissions on lower sales and other cost control programs.

Depreciation and amortization expense for the first six months was \$112, a decrease of \$25 or 18.2%, from \$137 reported for the same period last year. Interest expense for the six months ended March 31, 2003 was \$10 compared to \$159 for the same period last year. This decrease was due to the payoff of the mortgage on the Shirley, New York facility in January of 2002 and the repayment of certain notes to Applied Digital Solutions in August of 2002.

Loss from operations for the six months ended March 31, 2003 was \$810 compared to a loss from operations of \$272 for the same period last year. Loss before income taxes for the six months was \$820 compared to loss before income taxes of \$430 for the six months ended March 31, 2002. Our effective tax rate for the period was 38.0% compared to 39.8% for the same period last year.

Our net loss for the six months ended March 31, 2003 was \$508 compared to a net loss of \$259 reported the same period last year.

### **Liquidity and Capital Resources**

Our current ratio at March 31, 2003 was up to 4.1 compared to 3.7 at September 30, 2002. Working capital at March 31, 2003 was down to \$3,321 from \$4,081 at September 30, 2002, a decrease of \$760.

Cash used in operating activities in the first six months of fiscal year 2003 was \$1,356 compared to cash provided by operating activities in the first six months of fiscal year 2002 of \$2,024. The cash used in operating activities during the period was primarily a result of our net loss and a reduction of accounts payable. Additionally, there were increases in accounts receivable and other assets. The cash provided by operating activities during the six months ended March 31, 2003 of last fiscal year was a result of large reductions in accounts receivable, which were somewhat offset by a decrease in accounts payable.

Cash provided by investing activities was \$8 for the first six months of fiscal 2003 compared to \$2,430 for the same period last year. Cash provided by investing activities of \$8 for the six months ended March 31, 2003 was primarily a result of payments received on notes receivable, which was somewhat offset by capital expenditures. The cash provided by investing activities of \$2,430 in the six months ended March 31, 2002 was primarily a result of the sale of the Shirley, New York facility, sold in January 2002.

Net cash used in financing activities was \$26 for the six months ended March 31, 2003 versus cash used in financing activities of \$1,505 for the six months ended March 31, 2002. The \$26 of cash used in financing activities in the first six months of this year was a combination of payments made to pay down our borrowings on our line of credit with Applied Digital Solutions and payments made on our capital lease obligation. The \$1,505 of cash used in financing activities in the first six months of last year was primarily a combination of paying off the mortgage on the Shirley, New York facility and paying down the line of credit to Applied Digital Solutions.

Our business activities are capital intensive and, consequently, we finance our accounts receivable and inventory. Failure to obtain adequate product financing on a timely basis could have a material adverse affect on our business, results of operations, financial condition and cash flows. Our current financing agreements with IBM Credit LLC provide financing on inventory purchases up to \$2,500. Borrowing for purchases is based upon 75% of all eligible receivables due within 90 days and up to 100% of all eligible inventories. IBM Credit may grant temporary increases, thereby increasing the line of credit in order to accommodate high volume sale opportunities. Interest for balances not paid within the interest free period provided in the agreements accrues at prime plus 6.5%.

Combined borrowings under the financing arrangements described above amounted to \$104 and \$236 at March 31, 2003 and September 30, 2002, respectively, and are included in either accounts payable or accrued expenses and other liabilities.

In addition to the financing arrangements above, we have a line of credit with Applied Digital Solutions through its credit arrangements with IBM Credit. The credit agreement between Applied Digital Solutions and IBM Credit which became effective on March 27, 2002 contains covenants relating to Applied Digital Solutions' financial position and performance, as well as the financial position and performance of Digital Angel Corporation, an affiliate of Applied Digital Solutions. On September 30, 2002 and again on November 1, 2002, Applied Digital Solutions entered into amendments to the credit agreement. These amendments revised certain financial covenants of Applied Digital Solutions and Digital Angel Corporation.

Under the terms of the credit agreement, Applied Digital Solutions was required to repay IBM Credit approximately \$46.2 million, including approximately \$16.4 million of accrued interest and expenses, by February 28, 2003. Applied Digital Solutions has indicated that it failed to make the required payment to IBM Credit. We understand that, on March 7, 2003, Applied Digital Solutions received a letter from IBM Credit declaring an event of default under the credit agreement. Applied Digital Solutions has disclosed that, effective April 2, 2003, Applied Digital Solutions and IBM Credit entered into a forbearance agreement which, among other things, grants Applied Digital Solutions additional time within which to satisfy its obligations to IBM Credit. Management understands that \$68.0 million plus accrued interest must be repaid by Applied Digital Solutions by September 30, 2003 and an additional \$9.2 million plus accrued interest must be repaid by Applied Digital Solutions by March 31, 2004. Applied Digital Solutions has disclosed that it may fully satisfy its obligations to IBM Credit by paying IBM (i) \$30.0 million in cash by June 30, 2003, (ii) \$50.0 million in cash by September 30, 2003 or (iii) \$40.0 million in cash by September 30, 2003 with an additional \$10.0 million in cash due by December 31, 2003. We understand that a portion of these obligations may be satisfied with the proceeds from the sale of Digital Angel Corporation common stock if Applied Digital Solutions has not made the cash payments described above by September 30, 2003. Management is unaware of whether Applied Digital Solutions has the funds available to make the payments due under the credit agreement.

Applied Digital Solutions' shares of our common stock are pledged as collateral for amounts outstanding under the credit agreement. IBM Credit has a security interest in our receivables and inventories, up to the amount advanced to us from Applied Digital Solutions under the line of credit. As of March 31, 2003, we had \$18 due to Applied Digital Solutions under the line of credit. The failure of Applied Digital Solutions to make the required payments to IBM Credit or to otherwise comply with the terms and conditions of the forbearance agreement would permit IBM Credit to exercise its rights under the credit agreement, including enforcing its rights to collect all amounts due to Applied Digital Solutions under the line of credit and against the shares of our common stock owned by Applied Digital Solutions. Payment of the amount due under the line of credit would not materially affect our business operations or the amount available to us under our inventory financing arrangements with IBM. If IBM enforces its rights with respect to the shares of our common stock, then we would experience a change of control.

We believe that our present financing arrangements with IBM Credit and current cash position will be sufficient to fund our operations and capital expenditures for at least twelve months without utilizing any additional loans from IBM Credit through the Applied Digital Solutions credit facility. Our long-term capital needs may require additional sources of credit, however, any change in financing arrangements requires the consent of Applied Digital Solutions and IBM Credit. There can be no assurances that these consents will be given, or that we will be successful in our ability to negotiate additional sources of credit. Our inability to have continuous access to such financing at reasonable costs would materially and adversely impact our long-term financial condition, results of operations and cash flows.

#### **FORWARD-LOOKING STATEMENTS AND ASSOCIATED RISK**

Certain statements in this report, constitute "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, Section 21E of the Securities Exchange Act of 1934 and the Private Securities Litigation Reform Act of 1995. We intend that such forward-looking statements be subject to the safe harbors created thereby. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Such factors include, among others, the following: the ability to retain key personnel; the continued development of our technical, sales, marketing and management capabilities; relationships with and dependence on third-party suppliers; anticipated competition; uncertainties relating to economic conditions where we operate; uncertainties relating to government and regulatory policies; uncertainties relating to customer plans and commitments; rapid technological developments and obsolescence in the industries in which we operate and compete; potential performance issues with suppliers and customers; governmental export and import policies; global trade policies; worldwide political stability and economic growth; the highly competitive environment in which we operate; potential entry of new, well-capitalized competitors into our markets; our ability to maintain available sources of financing; and changes in our capital structure and cost of capital. The words "believe", "expect", "anticipate", "intend" and "plan" and similar expressions identify forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date the statement was made.

#### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We presently do not use any derivative financial instruments to hedge our exposure to adverse fluctuations in interest rates, foreign exchange rates, fluctuations in commodity prices or other market risks, nor do we invest in speculative financial instruments. For Information Technology Services, Inc., borrowings under the financing agreement with IBM Credit Corporation are at zero percent interest for the first 30 days, thereafter the interest rate is the prime rate plus 6.5%. For InfoTech USA, borrowings under the financing agreement with IBM Credit Corporation are at zero percent interest for the first 30 days, thereafter the interest rate is the prime rate plus 6.5%. Our interest income is sensitive to changes in the general level of U. S. interest rates, particularly since the majority of our investments are in short-term investments.

Due to the nature of our borrowings and our short-term investments, we have concluded that there is no material market risk exposure and, therefore, no quantitative tabular disclosures are required.

#### **ITEM 4. CONTROLS AND PROCEDURES**

Under the supervision and with the participation of our management, including our principal executive officer

and principal financial officer, we have evaluated the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Exchange Act Rule 13a-14 within 90 days of the filing date of this quarterly report. Based upon their evaluation, our principal executive officer and principal financial officer have concluded that our disclosure controls and procedures are effective in timely alerting them to material information relating to us (including our consolidated subsidiaries) required to be included in our periodic SEC filings. There were no significant changes in our internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation.

## **PART II OTHER INFORMATION**

### **ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

(i) An annual meeting of our shareholders was held on March 27, 2003 to:

- (i) Elect Charles L. Doherty and Scott R. Silverman and ratify appointment of Kevin McLaughlin,
- (ii) Amend our certificate of incorporation to change our name to "InfoTech USA, Inc.", and
- (iii) Ratify the appointment of J. H. Cohn LLP, as independent public accountants of the Company for the year ending September 30, 2003.

(ii) The results of the votes were as follows:

	For	Against	Abstain
Election of directors and ratification of appointment of director	4,810,226	10,017	-
Amendment of certificate of incorporation	4,810,338	9,017	888
Ratification of independent public accountants	4,809,338	9,017	1,888

### **ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K**

(a) Exhibits (listed by numbers corresponding to the Exhibit Table of Item 601 in Regulation S-K).  
See list of exhibits attached hereto.

(b) Reports on Form 8-K

On February 14, 2003, we filed a Current Report on Form 8-K under Item 7 disclosing the certifications made by our Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

On March 14, 2003, we filed a Current Report on Form 8-K under Item 5 reporting certain defaults by Applied Digital Solutions under its credit agreement with IBM Credit LLC.

On April 9, 2003, we filed a Current Report on Form 8-K under Items 5 and 7 reporting the resignation of Jerome C. Artigliere as chairman, chief executive officer and president and the appointment of Sebastian Perez as Chief Operating Officer and announcing that Applied Digital Solutions had entered into a forbearance agreement with IBM Credit LLC.

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**INFOTECH USA, INC.**

Dated: May 14, 2003

By: /s/ J. ROBERT PATTERSON

J. Robert Paterson

Vice President, Chief Financial Officer, Treasurer and

Director (Principal Financial Officer and Chief Accounting Officer)



## CERTIFICATIONS

I, Sebastian F. Perez, certify that:

1. I have reviewed this quarterly report on Form 10-Q of InfoTech USA, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
  - c) Presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date.
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 14, 2003

/s/ SEBASTIAN F. PEREZ  
Sebastian F. Perez, Chief Operating Officer and  
acting President and Chief Executive Officer  
(Principal executive officer)

I, J. Robert Patterson, certify that:

1. I have reviewed this quarterly report on Form 10-Q of InfoTech USA, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - d) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
  - e) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
  - f) Presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date.
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 14, 2003

/s/ J. ROBERT PATTERSON

J. Robert Patterson, Vice President, Chief Financial  
Officer, Treasurer and Director

(Principal financial officer)

## EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>
3.1	Amended and Restated Certificate of Incorporation dated April 21, 1997 *
3.2	Certificate of Amendment of Certificate of Incorporation dated March 22, 2002 *
3.3	Certificate of Amendment of Certificate of Incorporation dated April 9, 2003 *
3.4	Amended and Restated By-Laws *
10.1	Summary of Terms and Conditions setting forth the terms and conditions of the Forbearance Agreement among IBM Credit, LLC, Applied Digital Solutions, Inc., Digital Angel Share Trust and their applicable subsidiaries (if any) dated March 24, 2003 (incorporated by reference to Exhibit 10.2 to Applied Digital Solution, Inc.'s Current Report on Form 8-K, dated March 21, 2003)
10.2	Forbearance Agreement, Consent and Amendment, dated as of April 2, 2003, among IBM Credit, LLC, Applied Digital Solutions, Inc., Digital Angel Share Trust and the other Loan Parties thereto (incorporated by reference to Exhibit 10.27 to Applied Digital Solution, Inc.'s Post-Effective Amendment No. 1 to Registration Statement on Form S-1 (File No. 333-102165) filed with the Commission on April 11, 2003)

\* Filed herewith

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
SYSCOMM INTERNATIONAL CORPORATION**

The undersigned, John H. Spielberger and Dennis R. Wilson, being the President and Secretary, respectively, of SYSCOMM INTERNATIONAL CORPORATION, a Delaware corporation (the Corporation”), hereby certify as follows:

1. The date of filing of the original Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware was September 30, 1987. The original name of the Corporation was “Syscomm International Corporation.”

2. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the applicable provisions of Section 242 and 245 of the General Corporation Law of the State of Delaware.

3. The text of the Amended and Restated Certificate of Incorporation of the Corporation as amended and restated shall read in its entirety as follows:

FIRST: The name of the Corporation is SysComm International Corporation.

SECOND: The address of its registered office in the State of Delaware is No. 1209 Orange Street, Corporation Trust Center, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares which the Corporation shall have authority to issue is Forty-One Million (41,000,000), consisting of Forty Million (40,000,000) shares of common stock, all of par value of one cent (\$.01) each, and One Million (1,000,000) shares of preferred stock, all of par value of one cent (\$.01) each.

A. Preferred Stock

1. The preferred stock of the Corporation may be issued from time to time in one or more series of any number of shares, provided that the aggregate number of shares issued and not cancelled in any and all such series shall not exceed the total number of shares of preferred stock hereinabove authorized.

2. Authority is hereby vested in the Board of Directors from time to time to authorize the issuance of one or more series of preferred stock and, in connection with the creation of such series, to fix by resolution or resolutions providing for the issuance of shares thereof the characteristics of each such series including, without limitation, the following:

(a) the maximum number of shares to constitute such series, which may subsequently be increased or decreased (but not below the number of shares of that series then outstanding) by resolution of the Board of Directors, the distinctive designation thereof and the stated value thereof if different than the par value thereof;

(b) whether the shares of such series shall have voting powers, full or limited, together with any other series of preferred stock or common stock, or as a separate class, or no voting powers, and if any, the terms of such voting powers;

(c) the dividend rate, if any, on the shares of such series, the conditions and dates upon which such dividends shall be payable, the preference or relation which such dividends shall bear to the dividends payable on any other class or classes or on any other series of capital stock and whether such dividend shall be cumulative or noncumulative;

(d) whether the shares of such series shall be subject to redemption by the Corporation, and, if made subject to redemption, the times, prices and other terms, limitations, restrictions or conditions of such redemption;

(e) the relative amounts, and the relative rights or preference, if any, of payment in respect of shares of such series, which the holders of shares of such series shall be entitled to receive upon the liquidation, dissolution or winding-up of the Corporation;

(f) whether or not the shares of such series shall be subject to the operation of a retirement or sinking fund and, if so, the extent to and manner in which any such retirement or sinking fund shall be applied to the purchase or redemption of the shares of such series for retirement or to other corporation purposes and the terms and provisions relative to the operation thereof;

(g) whether or not the shares of such series shall be convertible into, or exchangeable for, shares of any other class, classes or series, or other securities, whether or not issued by the Corporation, and if so convertible or exchangeable, the price or prices or the rate or rates of conversion or exchange and the method, if any, of adjusting same;

(h) the limitations and restrictions, if any, to be effective while any shares of such series are outstanding upon the payment of dividends or the making of other distributions on, and upon the purchase, redemption or other acquisition by the Corporation of, the Common Stock (as defined below) or any other class or classes of stock of the Corporation ranking junior to the shares of such series either as to dividends or upon liquidation, dissolution or winding-up;

(i) the conditions or restrictions, if any, upon the creation of indebtedness of the Corporation or upon the issuance of any additional stock (including additional shares of such series or of any other series or of any other class) ranking on a parity with or prior to the shares of such series as to dividends or distributions of assets upon liquidation, dissolution or winding-up; and

(j) any other preference and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, as shall not be inconsistent with law, this Article Fourth or any resolution of the Board of Directors pursuant hereto.

B. Common Stock

1. The common stock of the Corporation may be issued from time to time in any number of shares, provided that the aggregate number of shares issued and not cancelled shall not exceed the total number of shares of common stock hereinabove authorized ("Common Stock").

2. Unless expressly provided by the Board of Directors of the Corporation in fixing the voting rights of any series of Preferred Stock, the holders of the outstanding shares of Common Stock shall exclusively possess all voting power for the election of directors and for all other purposes, each holder of record of shares of Common Stock being entitled to one vote for each share of such stock standing in his name on the books of the Corporation.

3. Subject to the prior rights of the holders of Preferred Stock now or hereafter granted pursuant to Article Fourth, the holders of Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of funds legally available for that purpose, dividends payable either in cash, stock or otherwise.

4. In the event of any liquidation, dissolution or winding-up of the Corporation, either voluntary or involuntary, after payment shall be made in full to the holders of Preferred Stock or any amounts to which they may be entitled, the holders of Common stock shall be entitled to the exclusion of the holders of Preferred Stock of any and all series to share, ratably according to the number of shares of Common Stock held by them, in all remaining assets of the Corporation available for distribution to its stockholders.

FIFTH: The name and mailing address of the sole incorporator is as follows:

<u>Name</u>	<u>Mailing Address</u>
Robert B. Smith	Wilson & Smith 25 Kingston Street Boston, Massachusetts 02111

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: The private property of the stockholders shall not be subject to the payment of the Corporation's debts to any extent whatever.

EIGHTH: The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation and for defining and regulating the powers of the Corporation and its directors and stockholders and are in furtherance and not in limitation of the powers conferred upon the Corporation by statute:

A. 1. The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors consisting of such number of directors as is determined from time to time by resolution adopted by affirmative vote of a majority of the entire Board of Directors; provided, however, that in no event shall the number of directors be less than three. The directors shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third (1/3) of the total number of directors constituting the entire Board of Directors. By unanimous written consent of the Board of Directors, the initial classes shall be elected as follows: Class I directors shall be elected for a one-year term, Class II directors for a two-year term and Class III directors for a three-year term. At each succeeding annual meeting of stockholders, successors to the class of directors whose terms expires at that annual meeting shall be elected for three-year terms. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional director of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. A director shall hold office until the annual meeting for the year in which his or her term expires and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office. Except as otherwise required by law, any vacancy on the Board of Directors that results from an increase in the number of directors and any other vacancy occurring in the Board of Directors shall be filled by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his or her predecessor.

2. Any director, or the entire Board of Directors, may be removed from office only for cause and only by the affirmative vote of not less than two-thirds (2/3) of the votes entitled to be cast by the holders of all of the then outstanding shares of Voting Stock (as defined in Article Tenth, Section C), voting together as one class; provided, however, that if a proposal to remove a director is made by or on behalf of an Interested Person (as defined in Article Tenth, Section C) or a director who is not an Independent Director (as defined in Article Tenth, Section C), then such removal shall also require the affirmative vote of not less than a majority of the votes entitled to be cast by the holders of all of the then outstanding shares of Voting Stock, voting together as one class, excluding Voting Stock beneficially owned by such Interested Person.

3. Notwithstanding the foregoing, whenever the holders of any one or more classes or series of stock issued by the Corporation shall have the right, voting separately

by class or series, to elect directors, the election, term of office, filing of vacancies and other features of such directorships shall be governed by the terms of this Amended and Restated Certificate of Incorporation applicable thereto, as amended, and such directors so elected shall not be divided into classes pursuant to Article Ninth, Section A unless expressly provided by such terms.

B. In furtherance and not limitation of the powers conferred by statute, the Board of Directors is expressly authorized:

1. To make, alter, amend or repeal the By-Laws of the Corporation. The holders of shares of Voting Stock shall, to the extent such power is at the time conferred on them by applicable law, also have the power to make, alter, amend or repeal the By-Laws of the Corporation, provided that any proposal by or on behalf of an Interested Person or a director who is not an Independent Director to make, alter, amend or repeal the By-Laws shall require approval by the affirmative vote described in Article Tenth, Section A, unless either (a) such action has been approved by a majority of the Board of Directors prior to such Interested Person first becoming an Interested Person; or (b) prior to such Interested Person first becoming an Interested Person, a majority of the Board of Directors has approved such Interested Person becoming an Interested Person and, subsequently a majority of the Independent Directors has approved such action.

2. To set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

3. By a majority of the whole Board of Directors, to designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The By-Laws may provide that in the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, or in the By-Laws of the Corporation, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board of Directors as provided in Article Fourth hereof, fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series), adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property



and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending the By-Laws of the Corporation; and, unless the resolution or By-Laws expressly so provide, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock or to adopt a certificate of ownership and merger pursuant to Section 253 of the General Corporation Law of the State of Delaware.

4. When and as authorized by the stockholders in accordance with statute, to sell, lease or exchange all or substantially all of the property and assets of the Corporation, including its goodwill and its corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property including shares of stock in, and/or other securities of, any other corporation or corporations, as the Board of Directors shall deem expedient and for the best interests of the Corporation.

5. To the full extent permitted or not prohibited by law, and without the consent of or other action by the stockholders, to authorize or create mortgages, pledges or other liens or encumbrances upon any or all of the assets, real, personal or mixed, and franchises of the Corporation, including after-acquired property, and to exercise all of the powers of the Corporation in connection therewith.

C. In addition to any other considerations which the Board of Directors may lawfully take into account, in determining whether to take or to refrain from taking corporate action on any matter, including proposing any matter to the stockholders of the Corporation, the Board of Directors may take into account the long-term as well as the short-term interests of the Corporation and its stockholders (including the possibility that these interests may be best served by the continued independence of the Corporation), customers, employees and other constituencies of the Corporation and its subsidiaries, including the effect upon communities in which the Corporation and its subsidiaries do business. In so evaluating any such determination, the Board of Directors shall be deemed to be performing their duties and acting in good faith and in the best interests of the Corporation within the meaning of Section 145 of the General Corporation Law of the State of Delaware, or any successor provision.

D. Subject to the rights of holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation, dissolution or winding-up, nominations for the election of directors may be made by the Board of Directors or by any stockholder entitled to vote in the election of directors generally. However, any stockholder entitled to vote in the election of directors generally may nominate one or more persons for election as directors at an annual meeting only pursuant to the Corporation's notice of such meeting or if written notice of such stockholder's intent to make such nomination or nominations has been received by the Secretary of the Corporation not less than sixty nor more than ninety days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than thirty (30) days or delayed by more than sixty (60) days from such anniversary, notice by the stockholder to be timely must be so received not earlier than the ninetieth day prior to such annual meeting and not later than the close of business on the later of (1) the sixtieth day prior to such annual meeting; or (2) the tenth day following the day on which notice of the day of the annual meeting was mailed or public disclosure thereof was made by the Corporation, whichever first occurs. For purposes of calculating the first such notice period following adoption of this Amended and Restated

Certificate of Incorporation, the first anniversary of the 1997 annual meeting shall be deemed to be the last day of the twelfth month following the consummation of the initial public offering of the Corporation's Common Stock. Each such notice shall set forth: (a) the name and address of the stockholder who intends to make the nomination and of the person or persons to be nominated; (b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (c) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) relating to the nomination or nominations; (d) the class and number of shares of the Corporation which are beneficially owned by such stockholder and the person to be nominated as of the date of such stockholder's notice and by any other stockholders known by such stockholder to be supporting such nominees as of the date of such stockholder's notice; (e) such other information regarding each nominee proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission; and (f) consent of each nominee to serve as a director of the Corporation if so elected.

In addition, in the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors, any stockholder entitled to vote in the election of directors generally may nominate one or more persons for election as directors at a special meeting only pursuant to the Corporation's notice of meeting or if written notice of such stockholder's intent to make such nomination or nominations, setting forth the information and complying with the form described in the immediately preceding paragraph, has been received by the Secretary of the Corporation not earlier than the ninetieth day prior to such special meeting and not later than the close of business on the later of (i) the sixtieth day prior to such meeting; or (ii) the tenth day following the day on which notice of the date of the special meeting was mailed or public disclosure thereof was made by the Corporation, whichever comes first.

No person shall be eligible for election as director of the Corporation unless nominated in accordance with the procedures set forth in Article Eight, Section D. The presiding officer of the meeting shall, if the facts warrant, determine and declare to the meeting that nomination was not made in accordance with the procedures prescribed by Article Eighth, Section D, and if he or she should so determine, the defective nomination shall be disregarded.

Elections of Directors need not be by written ballot unless the By-Laws of the Corporation shall so provide.

#### NINTH:

A. Meetings of the stockholders may be held within or without the State of Delaware, as the By-Laws may provide. Commencing with the date of the consummation of the initial public offering of the Corporation's Common Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such stockholders and may not be effected by a consent in writing by any such holders. Subject to the rights of holders of any class or series of stock having preference over the Common Stock as to dividends or upon liquidation, dissolution or winding-up, special

meetings of the stockholders of the Corporation may be called only by the holders of a majority of the outstanding shares of Common Stock or by a majority of the Board of Directors.

Except as otherwise required by law or by this Amended and Restated Certificate of Incorporation, the holders of not less than a majority in voting power of the shares entitled to vote at any meeting of stockholders; present in person or by proxy, shall constitute a quorum, and the act of the holders of a majority in voting power of the shares present in person or by proxy and entitled to vote on the subject matter shall be deemed the act of the stockholders. If a quorum shall fail to attend any meeting, the presiding officer may adjourn the meeting to another place, date or time. If a notice of any adjourned special meeting of stockholders is sent to all stockholders entitled to vote thereat, stating that it will be held with one-third (1/3) in voting power of the shares entitled to vote thereat constituting a quorum, then except as otherwise required by law, one-third (1/3) in voting power of the shares entitled to vote at such adjourned meeting, present in person or by proxy, shall constitute a quorum, and, except as otherwise required by law or this Amended and Restated Certificate of Incorporation, all matters shall be determined by the holders of a majority in voting power of the shares present in person or by proxy and entitled to vote on the subject matter.

B. At any meeting of the stockholders, only such business shall be conducted as shall have been properly brought before such meeting. To be properly brought before an annual meeting, business must be (1) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors; (2) otherwise properly brought before the meeting by or at the direction of the Board of Directors; or (3) otherwise properly brought before the meeting by a stockholder. For business to be properly brought before an annual meeting by a stockholder, the stockholders must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be received not less than sixty (60) days nor more than ninety days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than thirty (30) days or delayed by more than sixty (60) days from such anniversary, notice by the stockholder to be timely must be so received not earlier than the ninetieth day prior to such annual meeting and not later than the close of business on the later of (1) the sixtieth day prior to such annual meeting; or (2) the tenth day following the date on which notice of the date of the annual meeting was mailed or public disclosure thereof was made, whichever first occurs. For purposes of calculating the first such notice period following adoption of this Amended and Restated Certificate of Incorporation, the first anniversary of the 1997 annual meeting shall be deemed to be the last day of the twelfth month following the consummation of the initial public offering of the Corporation's Common Stock. Each such notice shall set forth as to each matter the stockholder proposes to bring before the annual meeting: (a) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the meeting; (b) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business; (c) the class, series and number of shares of the Corporation which are beneficially owned by the stockholder; and (d) and material interest of the stockholder in such business. To be properly brought before a special meeting (or any supplement thereto) given by or at the direction of the Board of Directors.

No business shall be conducted at any meeting of the stockholders except in accordance with the procedures set forth in Article Ninth, Section B. The presiding officer of the meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting and in accordance with the provisions of Article Ninth, Section B, and if he or she should so determine, any such business not properly brought before the meeting shall not be transacted. Nothing herein shall be deemed to affect the Corporation's proxy statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 14a-8 thereunder.

The books of the Corporation may be kept outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

TENTH:

A. In addition to any affirmative vote required by law or this Amended and Restated Certificate of Incorporation or the Amended and Restated By-Laws of the Corporation, and except as otherwise expressly provided in Section B of Article Tenth, a Business Transaction (as hereinafter defined) with, or proposed by or on behalf of, any Interested Person (as hereinafter defined) or any Affiliate (as hereinafter defined) of any Interested Person or any person who thereafter would be an Affiliate of such Interested Person shall require approval by the affirmative vote of not less than two-thirds (2/3) of the votes entitled to be cast by holders of all the then outstanding Voting Stock, voting together as one class, excluding Voting Stock beneficially owned by such Interested Person. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

B. The provisions of Article Tenth, Section A, shall not be applicable to any particular Business Transaction, and such Business Transaction shall require only such affirmative vote, if any, as is required by law or by any other provision of this Amended and Restated Certificate of Incorporation or the Amended and Restated By-Laws of the Corporation, or any agreement with any national securities exchange, if either (1) the Business Transaction shall have been approved by a majority of the Board of Directors prior to such Interested Person first becoming an Interested Person or (2) prior to such Interested Person first becoming an Interested Person, a majority of the Board of Directors shall have approved such Interested Person becoming an Interested Person and, subsequently, a majority of the Independent Directors (as hereinafter defined) shall have approved the Business Transaction.

C. The following definitions shall apply with respect to Article Tenth.

1. The term "Affiliate" shall mean a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified person.

2. A person shall be a "beneficial owner" of any Capital Stock (a) which such person or any of its Affiliates beneficially owns, directly or indirectly; (b) which such person or any of its Affiliates beneficially has, directly or indirectly, (i) the right to acquire

(whether such right is exercisable immediately or subject only to the passage of time or the occurrence of one or more events), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the beneficial owner of any security if the agreement, arrangement or understanding to vote such security arises solely from a revocable proxy or consent solicitation made pursuant to and in accordance with the Exchange Act, and is not also then reportable on Schedule 13D under the Exchange Act (or a comparable or successor report); or (c) which is beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of Capital Stock (except to the extent permitted by the proviso of clause (b)(ii) above). For the purposes of determining whether a person is an Interested Person pursuant to paragraph (7) of this Section C, the number of shares of Capital Stock deemed to be outstanding shall include shares deemed beneficially owned by such person through application of this paragraph (2) of Section C, but shall not include any other shares of Capital Stock that may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

3. The term “Business Transaction” shall mean any of the following transactions when entered into by the Corporation or a subsidiary of the Corporation with, or upon a proposal by or on behalf of, any Interested Person or any Affiliate of any Interested Person:

(a) any merger or consolidation of the Corporation or any subsidiary with (i) any Interested Person or (ii) any other corporation which is, or after such merger or consolidation would be, an Affiliate of an Interested Person;

(b) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the Interested Person of assets of the Corporation (other than Capital Stock (as hereinafter defined)) or of any subsidiary of the Corporation which assets have an aggregate market value equal to ten percent (10%) or more of the aggregate market value of all the outstanding stock of the Corporation;

(c) any transaction that results in the issuance of shares or the transfer of treasury shares by the Corporation or by any subsidiary of the Corporation of any Capital Stock or any capital stock of such subsidiary to the Interested Person, except (i) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the Interested Person became such, (ii) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the Interested Person became such, (iii) pursuant to an exchange offer by the Corporation to purchase stock

made on the same terms to all holders of said stock, (iv) any issuance of shares or transfer of treasury shares of Capital Stock by the Corporation, provided, however, that in the case of each of clauses (ii) through (iv) above there shall be no increase of more than one percent (1%) in the Interested Person's proportionate share of the Capital Stock of any class or series or of the Voting Stock or (v) pursuant to a public offering or private placement by the Corporation to an Institutional Investor;

(d) any reclassification of securities, recapitalization or other transaction involving the Corporation or any subsidiary of the Corporation which has the effect, directly or indirectly, of (i) increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the Interested Person, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the Interested Person or (ii) increasing the voting power, whether or not then exercisable, of an Interested Person in any class or series of stock of the Corporation or any subsidiary of the Corporation;

(e) the adoption of any plan or proposal by or on behalf of an Interested Person for the liquidation or dissolution of the Corporation; or

(f) any receipt by the Interested Person of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, tax benefits or other financial benefits (other than those expressly permitted in subparagraphs (a) through (e) above) provided by or through the Corporation or any subsidiary.

4. The term "Capital Stock" shall mean all capital stock of the Corporation authorized to be issued from time to time under Article Fourth of this Amended and Restated Certificate of Incorporation.

5. The term "Independent Directors" shall mean the members of the Board of Directors who are not Affiliates or representatives of, or associated with, an Interested Person and who were either directors of the Corporation prior to any person becoming an Interested Person or were recommended for election or elected to succeed such directors by a vote which includes the affirmative vote of a majority of the Independent Directors.

6. The term "Institutional Investor" shall mean a person that (a) has acquired, or will acquire, all of its securities of the Corporation in the ordinary course of its business and not with the purpose nor with the effect of changing or influencing the control of the Corporation, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to Section 13 of the Exchange Act and Rule 13d-3(b) thereunder, and (b) is a registered broker dealer; a bank as defined in Section 3(a)(6) of the Exchange Act; an insurance company as defined in, or an investment company registered under, the Investment Company Act of 1940; an investment advisor registered under the Investment Advisors Act of 1940; an employee benefit plan or pension fund subject to the

Employee Retirement Income Security Act of 1974 or an endowment fund; a patent holding company, provided that the aggregate amount held directly by the parent and directly and indirectly by its subsidiaries which are not persons specified in the foregoing subclauses of this clause (b) does not exceed one percent (1%) of the securities of the subject class; or a group, provided that all the members are persons specified in the foregoing subclauses of this clause (b).

7. The term “Interested Person” shall mean any person (other than the Corporation, any subsidiary, any Permitted Holder, any profit-sharing, employee stock ownership or other employee benefit plan of the Corporation or any subsidiary or any trustee or fiduciary with respect to any such plan when acting in such capacity) who (a) is the beneficial owner of Voting Stock representing ten percent (10%) or more of the votes entitled to be cast by the holders of all of the then outstanding shares of Voting Stock; (b) has stated in a filing with any governmental agency or press release or otherwise publicly disclosed a plan or intention to become or consider becoming the beneficial owner of Voting Stock representing ten percent (10%) or more of the votes entitled to be cast by the holders of all then outstanding shares of Voting Stock and has not expressly abandoned such plan, intention or consideration more than two years prior to the date in question; or (c) is an Affiliate of the Corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner of Voting Stock representing ten percent (10%) or more of the votes entitled to be cast by holders of all then outstanding shares of Voting Stock.

8. The term “Permitted Holder” shall mean John H. Spielberg or any trust or nominee account in which he has effective control or beneficial interest. The term “person” shall mean individual, corporation, partnership, unincorporated association, trust or other entity.

9. The term “person” shall mean individual, corporation, partnership, unincorporated association, trust or other entity.

10. The term “subsidiary” means any company of which a majority of the voting securities are owned, directly or indirectly, by the Corporation.

11. The term “Voting Stock” shall mean Capital Stock of any class or series entitled to vote in the election of directors generally.

D. A majority of the Independent Directors shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, for the purposes of (1) Article Tenth, all questions arising under Article Tenth including, without limitation (a) whether a person is an Interested Person, (b) the number of shares of Capital Stock or other securities beneficially owned by any person; and (c) whether a person is an Affiliate of another; and (2) this Amended and Restated Certificate of Incorporation, the question of whether a person is an Interested Person. Any such determination made in good faith shall be binding and conclusive on all parties.

E. Nothing contained in Article Tenth shall be construed to relieve any Interested Person from any fiduciary obligation imposed by law.

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

TWELFTH: The Corporation shall, to the fullest extent permitted by the provisions of § 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any By-Law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Board of Directors of the Corporation may, in its discretion, authorize the Corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liabilities asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the foregoing paragraph of this Article Eleventh.

THIRTEENTH: No director of the Corporation shall be personally liable to the Corporation or any stockholder of the Corporation for monetary damages for breach of fiduciary duty as a director, provided that this Article Thirteenth shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of Title 8 of the Delaware Code, or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this Article Thirteenth shall apply to or have an effect on the liability or alleged



liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to the effective date of such amendment or repeal.

FOURTEENTH: The Corporation reserves the right to amend, alter, change or repeal any provisions contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

**IN WITNESS WHEREOF**, SysComm International Corporation has caused this Certificate to be signed by John H. Spielberger, President and by Dennis R. Wilson, Secretary, this 21<sup>st</sup> day of April, 1997.

SYSCOMM INTERNATIONAL CORPORATION

By: s\ JOHN H. SPIELBERGER  
JOHN H. SPIELBERGER, President

By: s\ DENNIS R. WILSON  
DENNIS R. WILSON, Secretary

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

- **First:** That at the annual meeting of the stockholders of **SysComm International Corporation** resolutions were duly adopted setting forth a proposed amendment of the Certificate of Incorporation of said corporation. The resolution setting forth the proposed amendment is as follows:

**Resolved**, that the Certificate of Incorporation of this corporation be amended by changing the Article thereof numbered “**Fourth**” so that, as amended, said Article shall be and read as follows:

**“The total number of shares of stock which the Corporation shall have the authority to issue is eighty-five million (85,000,000) shares of common stock with a par value of One Cent (\$0.01) per share consisting of eighty million (80,000,000) shares of common stock and five million (5,000,000) shares of preferred stock.”**

- **Second:** That thereafter, such meeting of the stockholders of said corporation was duly called and held, at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.
- **Third:** That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.
- **Fourth:** That the capital of said corporation shall not be reduced under or by reason of said amendment.

By: /s/ Anat Ebenstein  
Name: Anat Ebenstein, as President

*STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 09:00 AM 03/22/02  
020202879 – 2139479*

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

- **First:** That at the annual meeting of the stockholders of **SysComm International Corporation** resolutions were duly adopted setting forth a proposed amendment of the Certificate of Incorporation of said corporation. The resolution setting forth the proposed amendment is as follows:

**Resolved**, that the Certificate of Incorporation of this corporation be amended by changing the Article thereof numbered “**FIRST**” so that, as amended, said Article shall be and read as follows:

**“The name of the Corporation is InfoTech USA, Inc.”**

- **Second:** That thereafter, such meeting of the stockholders of said corporation was duly called and held, at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.
- **Third:** That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.
- **Fourth:** That the capital of said corporation shall not be reduced under or by reason of said amendment.

By: /s/ J. Robert Patterson  
Name: J. Robert Patterson  
Title: Vice President

*STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 09:00 AM 04/09/2003  
030233596 – 213479*

**AMENDED AND RESTATED  
BY-LAWS  
OF  
INFOTECH USA, INC.**

**ARTICLE I**

**OFFICES**

Section 1.1. Registered Office. The registered office of InfoTech USA, Inc. (the “Corporation”) shall be at such location and with such registered agent in charge thereof as may be established by the Board of Directors from time to time.

Section 1.2. Other Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE II**

**STOCKHOLDERS**

Section 2.1. Annual Meetings. An annual meeting of stockholders shall be held for the election of directors and to transact such other business as may properly be brought before the meeting at such date, time and place either within or without the State of Delaware as may be designated from time to time by the Board of Directors and stated in the notice of the meeting.

Section 2.2. Special Meetings. A special meeting of the stockholders may be called only by the Board of Directors pursuant to a resolution adopted by the affirmative vote of a majority of the entire Board of Directors or by the Chairman of the Board of Directors, a Vice Chairman of the Board of Directors or the President. Only such business shall be conducted, and only such proposals shall be acted upon, as shall have been properly brought before the meeting as hereinafter provided.

Section 2.3. Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, annual or special, a written notice of the meeting shall be given to such stockholder or stockholders which shall state the place, date and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law or in the Amended and Restated Certificate of Incorporation, the written notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting.

Section 2.4. Notice of Stockholder Business at Meetings. At any meeting of stockholders, annual or special, only such business shall be conducted, and only such

proposals shall be acted upon, as shall have been properly brought before the meeting as hereinafter provided. For a proposal to be properly brought before a meeting, each item of business must either (a) be specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors or the persons calling the meeting as herein provided, (b) be otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (c) be otherwise properly brought before the meeting by a stockholder as hereinafter provided. For a proposal to be properly brought before a meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation, in the case of an annual meeting, not less than sixty (60) days nor more than ninety (90) days prior to the first anniversary of the preceding year's annual meeting of stockholders and, in the case of a special meeting, not less than ten (10) days immediately following the giving of notice of such special meeting; provided, however, that in the event that less than one hundred (100) days notice or prior public disclosure of the date of the annual meeting of stockholders is given or made to the stockholders, to be timely, notice of a proposal delivered by the stockholder must be received by the Secretary not later than the close of business on the tenth (10th) day following the day on which notice of the date of the annual meeting of stockholders was mailed or such public disclosure was made to the stockholders. The provisions of this Section 2.4 shall also govern what constitutes timely notice for purposes of Rule 14a-4(c) under the Securities Exchange Act of 1934, as amended. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the meeting (a) a brief description of the proposal desired to be brought before the meeting and the reasons for conducting such business at the meeting, (b) the name and address of record of the stockholder proposing the business and any other stockholders known by such stockholder to be supporting the proposal, (c) the class or classes of stock and number of shares of such class or classes of stock which are beneficially owned by the proposing stockholder or stockholders on the date of the stockholder notice, and (d) any material interest of the proposing stockholder or stockholders in the proposal.

Notwithstanding anything in these By-Laws to the contrary, no business shall be conducted at a meeting of stockholders except in accordance with the procedures set forth in this Section 2.4. The Board of Directors may reject any stockholder proposal submitted for consideration at a meeting of stockholders which is not made in accordance with the terms of this Section 2.4 or which is not a proper subject for stockholder action in accordance with provisions of applicable law. Alternatively, if the Board of Directors fails to consider the validity of any such stockholder proposal, the presiding officer of the meeting of stockholders may, if the facts warrant, determine and declare to the persons attending the meeting that the business was not properly brought before the meeting in accordance with the provisions of this Section 2.4, and he or she shall further declare that any such business not properly brought before such meeting shall not be transacted. The Board of Directors or, as the case may be, the presiding officer of the meeting shall have absolute authority to decide questions of compliance with the foregoing procedures and the Board of Directors' or, as the case may be, the presiding officer's ruling thereon shall be final and conclusive. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of stockholders of reports of officers, directors and

committees of the Board of Directors, but, in connection with such reports, no new business shall be acted upon at such meeting unless stated, filed and received as herein provided.

Section 2.5. Nomination of Director Candidates. To be qualified for election as a director, persons must be nominated in accordance with the procedures set forth in this Section 2.5. Nominations of candidates for election to the Board of Directors of the Corporation may be made only by or at the direction of the Board of Directors or by a stockholder entitled to vote at such meeting of stockholders. All such nominations, except those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received by the Secretary not less than sixty (60) days nor more than ninety (90) days prior to the first anniversary of the preceding year's annual meeting of stockholders; provided, however, that in the event that less than one hundred (100) days' notice or prior public disclosure of the date of the meeting of stockholders is given or made to stockholders, to be timely, notice of a nomination delivered by such stockholder must be received by the Secretary not later than the close of business on the tenth (10th) day following the day on which notice of the date of the meeting of stockholders was mailed or such public disclosure was made to the stockholders. Such stockholder's notice shall set forth (a) the name and address of the stockholder who intends to make the nomination and of the person or person to be nominated, (b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice, (c) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) relating to the nomination or nominations, (d) the class and number of shares of the Corporation which are beneficially owned by such stockholder and the person to be nominated as of the date of such stockholder's notice and by any other stockholders known by such stockholder to be supporting such nominees as of the date of such stockholder's notice, (e) such other information regarding each nominee proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission, and (f) the consent of each nominee to serve as a director of the Corporation if so elected.

At the request of the Board of Directors, any person nominated for election as a director shall furnish to the Secretary the information required by this Section 2.5 to be set forth in a stockholder's notice of nomination which pertains to the nominee. The Chairman of a meeting of stockholders shall, if the facts warrant, determine and declare at such meeting of stockholders that such nomination was not made in accordance with the procedures prescribed by this Section 2.5, and he or she shall further declare that the defective nomination shall be disregarded. The Chairman of a meeting of stockholders shall have absolute authority to decide questions of compliance with the foregoing procedures and his or her ruling thereon shall be final and conclusive.

Section 2.6. Adjournments. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If a quorum shall fail to attend any meeting, the presiding officer may adjourn the meeting to another place, date or time. If a notice of any adjourned special meeting of stockholders is sent to all stockholders entitled to vote thereat, stating that it will be held with one-third (1/3) in voting power of the shares entitled to vote thereat constituting a quorum, then except as otherwise required by law, one-third (1/3) in voting power of the shares entitled to vote at such adjourned meeting, present in person or by proxy, shall constitute a quorum, and, except as otherwise required by law or in the Amended and Restated Certificate of Incorporation, all matters shall be determined by the holders of a majority in voting power of the shares present in person or by proxy and entitled to vote on the subject matter.

Section 2.7. Quorum. At each meeting of stockholders, except where otherwise provided by law or the Amended and Restated Certificate of Incorporation or these By-Laws, the holders of a majority of the outstanding shares of each class of stock entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum. For purposes of the foregoing, two or more classes or series of stock shall be considered a single class if the holders thereof are entitled to vote together as a single class at the meeting. In the absence of a quorum, the stockholders so present may, by majority vote, adjourn the meeting from time to time in the manner provided by Section 2.6 of these By-Laws until a quorum shall be present or represented. The stockholders present or represented at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Shares of the Corporation's own capital stock belonging on the record date for the meeting to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including, but not limited to, its own stock, held by it in a fiduciary capacity.

Section 2.8. Organization. Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or in his or her absence by the Vice Chairman of the Board, if any, or in his or her absence by the President, or in his or her absence by a Vice President, or in the absence of all of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.9. Voting; Proxies. Unless otherwise provided in the Amended and Restated Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by him or her which has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after three (3) years from the date of such proxy, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date than the original proxy with the Secretary of the Corporation. Voting at meetings of stockholders need not be by written ballot and need not be conducted by inspectors unless the holders of a majority of the outstanding shares of all classes of stock entitled to vote thereon present in person or by proxy at such meeting shall so determine. At all meetings of stockholders for the election of directors, a plurality of the votes cast shall be sufficient to elect. All other elections and questions shall, unless otherwise provided by law or by the Amended and Restated Certificate of Incorporation or these By-Laws, be decided by the vote of the holders of a majority of the outstanding shares of all classes of stock entitled to vote thereon present in person or by proxy at the meeting, provided that (except as otherwise required by law or by the Amended and Restated Certificate of Incorporation) the Board of Directors may require a larger vote upon any election or question.

Section 2.10. Fixing Date for Determination of Stockholders of Record. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. If no record date is fixed by the Board of Directors: (1) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (2) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

Section 2.11. List of Stockholders Entitled to Vote. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, annual or special, a complete list of the stockholders entitled to vote at such meeting, arranged in alphabetical order, and showing the address of each such stockholder and the number of shares



registered in the name of each such stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present.

Section 2.12. Inspectors. The Board of Directors by resolution shall, in advance of any meeting of stockholders, appoint one (1) or more inspectors, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives of the Corporation, to act at the meeting and make a written report thereof. One (1) or more persons may be designated by the Board of Directors as alternate inspectors to replace any inspector who fails to act. If an inspector or alternate is not able to act at a meeting of stockholders, the chairman of the meeting, shall, appoint one (1) or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall have the duties prescribed by the General Corporation Law of the State of Delaware.

Section 2.13. Consent of Stockholders in Lieu of Meeting. Except as otherwise provided in the Amended and Restated Certificate of Incorporation, any action required by law to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of stockholders, may not be effected by consent in writing in lieu of a meeting by such stockholders.

### ARTICLE III

#### BOARD OF DIRECTORS

Section 3.1. Powers; Number; Qualifications. Except as may be otherwise provided by law or in the Amended and Restated Certificate of Incorporation, the business and affairs of the Corporation shall be managed under the direction of the Board of Directors. The number of directors which shall constitute the whole Board shall be not less than three (3) nor more than ten (10). The exact number of directors within the minimum and maximum limitation specified in the preceding sentence shall be fixed from time to time exclusively by resolution of a majority of the whole Board. Directors need not be stockholders or residents of the State of Delaware.

Section 3.2. Election; Term of Office. The directors shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist as nearly as may be possible, of one-third (1/3) of the total number of directors constituting the entire Board of Directors. At each annual meeting of stockholders, successors to the class of directors whose terms expire at such annual meeting, shall be elected for three (3) year terms. If the number of directors is changed, any increase or decrease shall be

apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional director of any class elected to fill a vacancy resulting from an increase in such class shall hold office for term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. A director shall hold office until the annual meeting for the year in which his or her term expires and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office. Except as otherwise required by law, any vacancy on the Board of Directors that results from an increase in the number of directors and any other vacancy occurring in the Board of Directors shall be filled by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his or her predecessor. Each director shall hold office until the expiration of the term for which he or she was elected and shall continue in office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Section 3.3. Resignation; Removal; Vacancies. Any director may resign at any time upon written notice to the Board of Directors or to the President or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein, no acceptance of such resignation shall be necessary to make it effective. A director may be removed from office only for cause and by the affirmative vote of the holders of not less than two-thirds (2/3) of all the outstanding shares of stock of the Corporation entitled to vote generally in the election of directors at a special meeting of stockholders called expressly for that purpose; provided, however, that if a proposal to remove a director is made by or on behalf of an Interested Person, as defined in Article Tenth, Section C of the Amended and Restated Certificate of Incorporation, or a director who is not an Independent Director, as defined in Article Tenth, Section C of the Amended and Restated Certificate of Incorporation, then such removal shall also require the affirmative vote of not less than a majority of the votes entitled to be cast by the holders of all of the then outstanding shares of Voting Stock, as defined in Article Tenth, Section C, Paragraph 11, voting together as one class, excluding Voting Stock beneficially owned by such Interested Person. Unless otherwise provided in the Amended and Restated Certificate of Incorporation or these By-Laws, any vacancies which exist following the election of the initial director shall be filled by the initial director and vacancies and newly created directorships resulting from any increase in the authorized number of directors or from any other cause shall be filled by a majority of the directors then in office, although less than a quorum, or by the sole remaining director, and directors so chosen shall hold office until the next annual election of the class for which such directors shall have been chosen, and until their successors shall be elected and qualified. The stockholders of the Corporation are expressly prohibited from cumulating their votes in any election of directors of the Corporation.

Section 3.4. Regular Meetings. Regular meetings of the Board of Directors shall be held at such places within or without the State of Delaware and at such times as the

Board may from time to time determine, and if so determined, notice thereof need not be given.

Section 3.5. Special Meetings. Special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by the Chairman of the Board, if any, by the Vice Chairman of the Board, if any, by the President or by any two (2) directors. Notice of any special meeting of the Board of Directors shall be given at least five (5) days prior to the date of the special meeting by written notice to each director provided however that if the notice is electronically delivered, the notice of such meeting may be reduced to no less than twenty-four (24) hours.

Section 3.6. Telephonic Meetings Permitted. Unless otherwise restricted by the Amended and Restated Certificate of Incorporation or these By-Laws, members of the Board of Directors, or any committee designated by the Board, may participate in a meeting of the Board or of such committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 3.5 shall constitute presence in person at such meeting.

Section 3.7. Quorum; Vote Required for Action. At all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board unless the Amended and Restated Certificate of Incorporation or these By-Laws shall require a vote of a greater number. In case at any meeting of the Board a quorum shall not be present, the members of the Board present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 3.8. Organization. Meetings of the Board of Directors shall be presided over by the Chairman of the Board, if any, or in his or her absence by the Vice Chairman of the Board, if any, or in his or her absence by the President, or in their absence by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 3.9. Informal Action by Directors. Unless otherwise restricted by the Amended and Restated Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or such committee.

Section 3.10. Compensation. The Board of Directors shall have the authority to fix compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for

attendance at each meeting of the Board of Directors. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

## ARTICLE IV

### COMMITTEES

Section 4.1. Committees. The Board of Directors may, by resolution adopted by a majority of the entire Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting of such committee and not disqualified from voting, whether or not he or she or they constitute a quorum, may unanimously appoint another member of the Board to act at such meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have power or authority in reference to amending the Amended and Restated Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of dissolution, removing or indemnifying directors or amending these By-Laws; and, unless the resolution expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

Section 4.2. Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board may make, alter and repeal rules for the conduct of its business. In the absence of a provision by the Board of Directors or a provision in the rules of such committee to the contrary, a majority of the entire authorized number of members of such committee shall constitute a quorum for the transaction of business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and in all other respects each committee shall conduct its business in the same manner as the Board of Directors of the Corporation conducts its business pursuant to Article III of these By-Laws.

## ARTICLE V

### OFFICERS

Section 5.1. Officers; Election; Qualification; Term of Office; Resignation; Removal; Vacancies. As soon as practicable after the annual meeting of stockholders in each year, the Board of Directors shall elect a President and a Secretary, and the Board of

Directors may, if it so determines, elect from among its members a Chairman of the Board and a Vice Chairman of the Board. The Board may also elect one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers and may give any of them such further designations or alternate titles as it considers desirable. Each such officer shall hold office until the first meeting of the Board of Directors after the annual meeting of stockholders next succeeding his or her election, and until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any officer may resign at any time upon written notice to the Board of Directors or to the President or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective. The Board of Directors may remove any officer with or without cause at any time. Any such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation, but the election or appointment of an officer shall not of itself create contractual rights. Any number of offices may be held by the same person. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled for the unexpired portion of the term by the Board of Directors at any regular or special meeting of the Board.

Section 5.2. Powers and Duties of Executive Officers. The officers of the Corporation shall have such powers and duties in the management of the Corporation as may be prescribed by the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors. The Board may require any officer, agent or employee to give security for the faithful performance of his or her duties.

## ARTICLE VI

### STOCK

Section 6.1. Certificates. Every holder of stock in the Corporation shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairman or Vice Chairman of the Board of Directors, if any, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation, certifying the number of shares owned by him or her in the Corporation. If such certificate is manually signed by one officer or manually countersigned by a transfer agent or by a registrar, any other signature on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

When the Corporation is authorized to issue shares of more than one (1) class, there shall be set forth upon the face or back of the certificate, or the certificate shall have a statement that the Corporation will furnish to any stockholder upon request and without

charge, a full statement of designations, preferences, limitations and relative rights of the shares of each class authorized to be issued and, if the Corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the Board of Directors to fix and determine the relative rights and preferences of subsequent series.

Section 6.2. Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 6.3. Dividends. Subject to the provisions of the Amended and Restated Certificate of Incorporation, the Board of Directors shall have power to declare and pay dividends upon shares of stock of the Corporation, but only out of funds available for the payment of dividends as provided by law.

Subject to the provisions of the Amended and Restated Certificate of Incorporation, any dividends declared upon the stock of the Corporation shall be payable on such date or dates as the Board of Directors shall determine. If the day fixed for the payment of any dividend shall in any year fall upon a legal holiday, then the dividend payable on such date shall be paid on the next day not a legal holiday.

## ARTICLE VII

### INDEMNIFICATION

Section 7.1. Indemnification of Officers and Directors. The Corporation shall to the fullest extent permitted by the laws of Delaware as the same now or may hereafter exist, indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a

presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful. To the extent that a director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 7.1 of this ARTICLE VII or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 7.2. Determination. Any indemnification required under Section 7.1 of this ARTICLE VII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Section 7.1 of this ARTICLE VII. Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

Section 7.3. Advancement of Expenses. Expenses (including attorneys' fees) incurred by an officer or a director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in or pursuant to this ARTICLE VII.

Section 7.4. Other Rights of Indemnification. The indemnification and advancement of expenses provided by, or granted pursuant to this ARTICLE VII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any By-Law of the Corporation, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

Section 7.5. Indemnification Agreements. Without limiting the provisions of this ARTICLE VII, the Corporation is authorized from time to time, without further action by the stockholders of the Corporation, to enter into agreements with any director or officer of the Corporation providing such rights of indemnification as the Corporation may deem appropriate, up to the maximum extent permitted by law. Any agreement entered into by the Corporation with a director may be authorized by the other directors, and such authorization shall not be invalid on the basis that similar agreements may have been or may thereafter be entered into with other directors.

Section 7.6. Liability Insurance. The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director or

officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of this ARTICLE VII.

Section 7.7. Survival of Right to Indemnification. The indemnification and advancement of expenses provided by, or granted pursuant to, this ARTICLE VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7.8. Definitions. For purposes of this ARTICLE VII, references to a “corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which if its separate existence had continued, would have had power and authority to indemnify its directors or officers so that a person who is or was a director or officer of such constituent corporation, or is or was serving at the request of such constituent corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this ARTICLE VII with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued. For purposes of this ARTICLE VII, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the Corporation” shall include any service as a director or officer of the Corporation which imposes duties on, or involves services by such director or officer with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this ARTICLE VII.

Section 7.9. Indemnification of Employees and Agents. Persons who are not covered by the foregoing provisions of this ARTICLE VII and who are or were employees or agents of the Corporation, or are or were serving at the request of the Corporation as employees or agents of another corporation, partnership, joint venture, trust or other enterprise, may be indemnified to the fullest extent permitted by the laws of Delaware as the same now or may hereafter exist or to such lesser extent as the Board of Directors of the Corporation, in its discretion, may from time to time deem appropriate.

## ARTICLE VIII

## MISCELLANEOUS



Section 8.1. Fiscal Year. The fiscal year of the Corporation shall be such fiscal year as the Board of Directors from time to time by resolution shall determine.

Section 8.2. Seal. The Corporation may have a corporate seal which shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors. The corporate seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 8.3. Manner of Notice. Whenever, under the provisions of the statutes or of the Amended and Restated Certificate of Incorporation or of these By-Laws, notice is required to be given to any stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such stockholder, at his or her address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors or officers of the Corporation may be given by telegram, telephone, mailgram, telex, telecopier, courier, electronically or any other similar medium.

Section 8.4. Waiver of Notice of Meetings of Stockholders, Directors and Committees. Whenever notice is required to be given by law or under any provision of the Amended and Restated Certificate of Incorporation or these By-Laws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless so required by the Amended and Restated Certificate of Incorporation or these By-Laws.

Section 8.5. Interested Directors; Quorum. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because his or her or their votes are counted for such purpose, provided the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of not less than two-thirds (2/3) of the votes entitled to be cast by holders of all the then outstanding Voting Stock, voting together as one (1) class, excluding Voting Stock beneficially owned by such Interested Person. Such affirmative vote shall be required notwithstanding the fact that no vote may

be required, or that a lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

Section 8.6. Form of Records. Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, or be in the form of, punch cards, magnetic tape, photographs, microphotographs or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect the same.

Section 8.7. Amendment of By-Laws. These By-Laws may only be altered or repealed, and new By-Laws made pursuant to the provisions of Article Eight, Section B, Paragraph 1 of the Amended and Restated Certificate of Incorporation.