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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): September 26, 2008

MODUSLINK GLOBAL SOLUTIONS, INC.

(Exact name of registrant as specified in its charter)

Delaware
*(State or other jurisdiction
of incorporation)*

000-23262
(Commission File No.)

04-2921333
*(IRS Employer
Identification No.)*

1100 Winter Street
Waltham, Massachusetts
(Address of principal executive offices)

02451
(Zip Code)

(781) 663-5001
(Registrant's telephone number, including area code)

CMGI, Inc.
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 2.02 Results of Operations and Financial Condition.

On September 29, 2008, ModusLink Global Solutions, Inc. (the "Registrant") (which changed its name from CMGI, Inc. earlier today, as described in Item 5.03 below) reported its results of operations for its fourth fiscal quarter and fiscal year ended July 31, 2008. A copy of the press release issued by the Registrant concerning the foregoing results is furnished herewith as Exhibit 99.1 and is incorporated herein by reference.

The information contained herein and in the accompanying exhibit shall not be incorporated by reference into any filing of the Registrant, whether made before or after the date hereof, regardless of any general incorporation language in such filing, unless expressly incorporated by specific reference to such filing. The information in this report, including the exhibit hereto, shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section or Sections 11 and 12(a)(2) of the Securities Act of 1933, as amended.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

CMGI, Inc. Name Change to ModusLink Global Solutions, Inc.

On September 29, 2008, the Registrant changed its name from "CMGI, Inc." to "ModusLink Global Solutions, Inc" via the merger of a wholly-owned subsidiary of the Registrant into the Registrant (the "Merger"). In connection with the name change, the Registrant's common stock will begin trading under the ticker symbol "MLNK" on September 30, 2008.

On September 29, 2008, the Registrant filed a Restated Certificate of Incorporation, reflecting the name change, the Certificate of Retirement and the Certificates of Elimination discussed below (the "Restated Certificate of Incorporation").

On September 24, 2008, the Board of Directors of the Registrant approved and authorized the adoption of the Second Amended and Restated Bylaws of the Registrant (the "Amended Bylaws") upon the effectiveness of the Merger described above, which amended and restated the Registrant's prior Amended and Restated Bylaws solely to reflect the name change.

Prior to restating its Certificate of Incorporation, the Registrant retired and/or eliminated certain series of preferred stock which were no longer outstanding, for the purpose of administratively simplifying the Certificate of Incorporation prior to its restatement. No shareholder rights were affected by these actions, which are described below.

Retirement and/or Elimination of Series of Preferred Stock.

On September 26, 2008, the Registrant filed a Certificate of Retirement of the Registrant's Series A Convertible Preferred Stock (the "Certificate of Retirement") with the Secretary of State of the State of Delaware, which became effective upon its filing. The Certificate of Retirement (i) eliminated the previous designation of 250 shares of Series A Convertible Preferred Stock, none of which were outstanding at the time of filing, (ii) caused such shares of Series A Convertible Preferred Stock to resume the status of authorized but unissued shares of preferred stock of the Registrant and (iii) eliminated from the Registrant's Restated of Certificate of Incorporation filed with the Secretary of State of the State of Delaware on November 9, 1993 all reference to the Series A Convertible Preferred Stock.

On September 26, 2008, the Registrant filed a Certificate of Elimination of the Registrant's Series B Convertible Preferred Stock and a Certificate of Elimination of the Registrant's Series D Preferred Stock (together, the "Certificates of Elimination") with the Secretary of State of the State of Delaware, which became effective on their respective filings. The Certificates of Elimination (i) eliminated the previous designation of 50,000 shares of Series B Convertible Preferred Stock, none of which were outstanding at the time of filing, (ii) eliminated the previous designation of 18,090.45 shares of Series D Preferred Stock, none of which were outstanding at the time of filing, (iii) caused such shares of Series B Convertible Preferred Stock and Series D Preferred Stock to resume the status of authorized but unissued shares of preferred stock of the Registrant and (iv) eliminated from the Registrant's Restated of Certificate of Incorporation filed with the Secretary of State of the State of Delaware on November 9, 1993 all reference to the Series B Convertible Preferred Stock and the Series D Preferred Stock.

Both prior to and upon the filing of the Certificate of Retirement and the Certificates of Elimination, the Registrant had 5,000,000 shares of preferred stock authorized, none of which was or is issued or outstanding.

The foregoing summaries of the Certificate of Retirement, Certificates of Elimination, Restated Certificate of Incorporation and Amended Bylaws do not purport to be complete and are qualified in their entirety by reference to the full text of the Certificate of Retirement, Certificates of Elimination, Restated Certificate of Incorporation and Amended Bylaws filed as exhibits hereto, which exhibits are incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

The exhibits listed in the Exhibit Index below are filed or furnished with this report.

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 hereunto duly authorized.

ModusLink Global Solutions, Inc.

Date: September 29, 2008

By: /s/ Steven G. Crane

Steven G. Crane

Chief Financial Officer

EXHIBIT INDEX

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|---|
| 3.1 | Certificate of Retirement of Series A Convertible Preferred Stock of the Registrant, dated September 26, 2008. |
| 3.2 | Certificate of Elimination of Series B Convertible Preferred Stock of the Registrant, dated September 26, 2008. |
| 3.3 | Certificate of Elimination of Series D Preferred Stock of the Registrant, dated September 26, 2008. |
| 3.4 | Restated Certificate of Incorporation of the Registrant, dated September 29, 2008. |
| 3.5 | Second Amended and Restated By-Laws of the Registrant, dated September 29, 2008. |
| 99.1 | Press Release of the Registrant, dated September 29, 2008. |

CERTIFICATE OF RETIREMENT**OF****CMGI, INC.****SERIES A CONVERTIBLE PREFERRED STOCK**

Pursuant to Section 243 of the General Corporation Law of the State of Delaware

CMGI, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter called the "Corporation"), does hereby certify:

FIRST: All of the designated shares of the Corporation's Series A Convertible Preferred Stock were converted into shares of common stock of the Corporation in the fiscal year ended July 31, 1994.

SECOND: That at a meeting of the Board of Directors of the Corporation, the following resolutions were duly adopted setting forth the proposed retirement of all of the Corporation's Series A Convertible Preferred Stock as set forth herein:

RESOLVED, that no shares of the Corporation's Series A Convertible Preferred Stock are outstanding and as the Restated Certificate of Incorporation filed with the Secretary of State of the State of Delaware on November 9, 1993 prohibits the reissuance of the Corporation's Series A Convertible Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise, none will be issued subject to such Restated Certificate of Incorporation.

FURTHER RESOLVED, that a Certificate of Retirement be executed and filed with the Secretary of State of the State of Delaware, which shall have the effect when filed in Delaware of retiring the Series A Convertible Preferred Stock and eliminating from the Restated Certificate of Incorporation of the Corporation all matters set forth therein with respect to the Series A Convertible Preferred Stock.

THIRD: The Restated Certificate of Incorporation filed with the Secretary of State of the State on Delaware on November 9, 1993 provides that any shares of Series A Convertible Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall not be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

FOURTH: In accordance with the provisions of Section 243 of the General Corporation Law of the State of Delaware, upon the effective date of the filing of this Certificate of Retirement, all of the 250 designated shares of Series A Convertible Preferred Stock will be retired and the Restated Certificate of Incorporation of the Corporation, as amended, shall be amended to eliminate therefrom all reference to such Series A Convertible Preferred Stock, and all 250 shares of Series A Convertible Preferred Stock shall resume the status of authorized but unissued shares of preferred stock, \$.01 par value per share, of the Corporation.

IN WITNESS WHEREOF, said CMGI, Inc. has caused this certificate to be signed by Peter L. Gray, its Executive Vice President, General Counsel and Secretary, this 26th day of September 2008.

CMGI, INC.

By: /s/ Peter L. Gray
Executive Vice President, General Counsel and Secretary

CERTIFICATE OF ELIMINATION**OF****CMGI, INC.****SERIES B CONVERTIBLE PREFERRED STOCK**

Pursuant to Section 151(g) of the General Corporation Law of the State of Delaware

CMGI, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter called the "Corporation"), does hereby certify:

FIRST: That a meeting of the Board of Directors of the Corporation, the following resolutions were duly adopted setting forth the proposed elimination of the Corporation's Series B Convertible Preferred Stock as set forth herein:

RESOLVED, that no shares of the Corporation's Series B Convertible Preferred Stock are outstanding and none will be issued subject to the Certificate of Designations, Preferences and Rights of the Series B Convertible Preferred Stock filed with the Secretary of State of the State of Delaware on December 22, 1998 with respect to such Series B Convertible Preferred Stock.

FURTHER RESOLVED, that a Certificate of Elimination be executed and filed with the Secretary of State of the State of Delaware, which shall have the effect when filed in Delaware of eliminating from the Restated Certificate of Incorporation of the Corporation all matters set forth in the Certificate of Designations, Preferences and Rights of the Series B Convertible Preferred Stock with respect to such Series B Convertible Preferred Stock.

SECOND: None of the designated shares of the Corporation's Series B Convertible Preferred Stock are outstanding and none will be issued subject to the Certificate of Designations, Preferences and Rights of the Series B Convertible Preferred Stock filed with the Secretary of State of the State of Delaware on December 22, 1998.

THIRD: In accordance with the provisions of Section 151(g) of the General Corporation Law of the State of Delaware, upon the effective date of the filing of this Certificate of Elimination, the Restated Certificate of Incorporation of the Corporation, as amended, is hereby amended to eliminate from the Restated Certificate of Incorporation all matters set forth in the Certificate of Designations, Preferences and Rights of the Series B Convertible Preferred Stock with respect to such Series B Convertible Preferred Stock, and all shares of Series B Convertible Preferred Stock shall resume the status of authorized but unissued shares of preferred stock, \$.01 par value per share, of the Corporation.

IN WITNESS WHEREOF, said CMGI, Inc. has caused this certificate to be signed by Peter L. Gray, its Executive Vice President, General Counsel and Secretary, this 26th day of September 2008.

CMGI, INC.

By: /s/ Peter L. Gray
Executive Vice President, General Counsel and Secretary

CERTIFICATE OF ELIMINATION**OF****CMGI, INC.****SERIES D PREFERRED STOCK**

Pursuant to Section 151(g) of the General Corporation Law of the State of Delaware

CMGI, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter called the "Corporation"), does hereby certify:

FIRST: That a meeting of the Board of Directors of the Corporation, the following resolutions were duly adopted setting forth the proposed elimination of the Corporation's Series D Preferred Stock as set forth herein:

RESOLVED, that no shares of the Series D Preferred Stock are outstanding and none will be issued subject to the Certificate of Designations, Preferences and Rights of the Series D Preferred Stock filed with the Secretary of State of the State of Delaware on August 18, 1999 with respect to such Series D Preferred Stock.

FURTHER RESOLVED, that a Certificate of Elimination be executed and filed with the Secretary of State of the State of Delaware, which shall have the effect when filed in Delaware of eliminating from the Restated Certificate of Incorporation of the Corporation all matters set forth in the Certificate of Designations, Preferences and Rights of the Series D Preferred Stock with respect to such Series D Preferred Stock.

SECOND: None of the designated shares of the Corporation's Series D Preferred Stock are outstanding and none will be issued subject to the Certificate of Designations, Preferences and Rights of the Series D Preferred Stock filed with the Secretary of State of the State of Delaware on August 18, 1999.

THIRD: In accordance with the provisions of Section 151(g) of the General Corporation Law of the State of Delaware, upon the effective date of the filing of this Certificate of Elimination, the Restated Certificate of Incorporation of the Corporation, as amended, is hereby amended to eliminate from the Restated Certificate of Incorporation all matters set forth in the Certificate of Designations, Preferences and Rights of the Series D Preferred Stock with respect to such Series D Preferred Stock, and all shares of Series D Preferred Stock shall resume the status of authorized but unissued shares of preferred stock, \$.01 par value per share, of the Corporation.

IN WITNESS WHEREOF, said CMGI, Inc. has caused this certificate to be signed by Peter L. Gray, its Executive Vice President, General Counsel and Secretary, this 26th day of September 2008.

CMGI, INC.

By: /s/ Peter L. Gray
Executive Vice President, General Counsel and Secretary

RESTATED
CERTIFICATE OF INCORPORATION
OF
MODUSLINK GLOBAL SOLUTIONS, INC.

MODUSLINK GLOBAL SOLUTIONS, INC. (the "Corporation"), a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the Corporation is ModusLink Global Solutions, Inc., and the name under which the Corporation was originally incorporated was CMG Holdings, Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State was May 5, 1986.

2. This Restated Certificate of Incorporation only restates and integrates and does not further amend the provisions of the Restated Certificate of Incorporation of this Corporation as heretofore amended or supplemented and there is no discrepancy between those provisions and the provisions of this Restated Certificate of Incorporation.

3. The text of the Restated Certificate of Incorporation as amended or supplemented heretofore is hereby restated and without further amendments or changes to read as herein set forth in full.

FIRST: The name of the Corporation is ModusLink Global Solutions, Inc.

SECOND: The registered office of the Corporation in the State of Delaware is located at 1209 Orange Street, 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 Delaware General Corporation Law.

FOURTH: The total number of shares of capital stock which the Corporation is authorized to issue is one billion four hundred five million (1,405,000,000) shares, of which one billion four hundred million (1,400,000,000) shares shall be common stock, par value \$.01 per share ("Common Stock") and five million (5,000,000) shares shall be preferred stock, par value \$.01 per share ("Preferred Stock").

Any and all such shares issued for which the full consideration has been paid or delivered, shall be deemed fully paid stock and the holder of such shares shall not be liable for any further call or assessment or any other payment thereon.

No holder of any of the shares of any class of stock of the Corporation, whether now or hereafter authorized or issued, shall be entitled as of right to purchase or subscribe for (i) any unissued stock of any class whatsoever of stock of the Corporation, or (ii) any new or additional share of any class whatsoever of stock of the Corporation to be issued by reason of any increase of the authorized stock of the Corporation, or of any class of such stock, or (iii) bonds, certificates of indebtedness, debentures or other securities convertible into stock of any class of the Corporation or carrying any right to purchase stock of any class of the Corporation, but any such unissued stock, or additionally authorized issue of any stock, or other securities convertible into stock of the Corporation may be issued and disposed of pursuant to a resolution or resolutions of the Board of Directors to such persons, firms, corporations, associations or other entities and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

Section 1. Common Stock.

The powers, preferences, rights, qualifications, limitations and restrictions relating to the Common Stock are as follows:

(a) The Common Stock is junior to the Preferred Stock and is subject to all the powers, rights, privileges, preferences and priorities of the Preferred Stock designated herein or in any resolution or resolutions adopted by the Board of Directors pursuant to authority expressly vested in it by the provisions of **Section 2** of this **Article FOURTH**.

(b) The Common Stock shall have voting rights for the election of directors and for all other purposes (subject to the powers, rights, privileges, preferences and priorities of the Preferred Stock as provided above), each holder of Common Stock being entitled to one vote for each share thereof held by such holder, except as otherwise required by law.

Section 2. Preferred Stock.

The Board of Directors is expressly authorized to provide for the issuance of all or any part of the shares of the Preferred Stock in one or more classes or series, and to fix for each such class or series such voting powers, full or limited or fractional or no voting powers, and such distinctive designations, preferences and relative, participating, optional or other special rights, and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors in its sole discretion providing for the issuance of such class or series and as may be permitted by the Delaware General Corporation Law including, without limitation, the authority to determine with respect to the shares of any such class or series (i) whether such shares shall be redeemable, and, if so, the terms and

conditions of such redemption, whether for cash, property or rights, including securities of any other corporation, and whether at the option of either the Corporation or the holder or both, including the date or dates or the event or events upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates; **(ii)** whether such shares shall be entitled to receive dividends (which may be cumulative or noncumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or any other series; **(iii)** the rights of such shares in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of such shares; **(iv)** whether such shares shall be convertible into, or exchangeable for, shares of any other class or classes of stock, or of any other series of the same or any other class or classes of stock whether at the option of either the Corporation or the holder or both, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine; **(v)** whether the class or series shall have a sinking fund for the redemption or purchase of such shares, and, if so, the terms and amount of such sinking fund; or **(vi)** provisions as to any other voting, optional, and/or special or relative rights, preferences, limitations, or restrictions; and **(vii)** the number of shares and designation of such class or series.

Section 3. Intentionally Blank.

Section 4. Shares Entitles to More or Less Than One Vote.

If any class or series of the Corporation's capital stock shall be entitled to more or less than one vote per share, on any matter, every reference in this Restated Certificate of Incorporation or in any resolution or resolutions adopted by the Board of Directors pursuant to authority expressly vested in it by the provisions of **Section 2** of this **Article FOURTH** with respect to the Preferred Stock or in any relevant provision of law or in any rule or regulation, to a majority or other proportion of stock shall be deemed to refer to such majority or other proportion of the votes of such stock.

Section 5. Amendment.

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, **Section 2** of this **Article FOURTH**. For the purposes of this Restated Certificate of Incorporation, "Voting Stock" shall mean the outstanding shares or capital stock of the Corporation entitled to vote generally in the election of directors.

FIFTH: In furtherance of, and not in limitation of, the powers conferred by statute, the Board of Directors is expressly authorized and empowered:

(a) to manage, or direct the management of, the business and affairs of the Corporation and to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the Delaware General Corporation Law, this Restated Certificate of Incorporation and the By-Laws of the Corporation; and

(b) from time to time to determine to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Corporation, or any of them, shall be open to inspection by stockholders; and no stockholder shall have any right to inspect any account, book or document of the Corporation except as conferred by applicable law.

The Corporation may in its By-Laws confer powers upon the Board of Directors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon the Board of Directors by applicable law.

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, this **Article FIFTH**.

SIXTH: Subject to the rights of the holders of any class or series of stock having a preference expressly vested in it by the provisions of **Section 2** of **Article FOURTH** with respect to the Preferred Stock:

(a) any action required or permitted to be taken by the stockholders of the Corporation must be effected only at a duly called annual or special meeting of stockholders of the Corporation and may not, after the effective date of this Restated Certificate of Incorporation, be effected by any consent in writing of such stockholders;

(b) special meetings of the stockholders of the Corporation may be called only (i) by the Chairman of the Board of Directors, (ii) pursuant to a resolution approved by a majority of the Whole Board (as hereinafter defined), or (iii) pursuant to a written request of the holders of 20% of the Voting Stock; and

(c) the business permitted to be conducted at any special meeting of the stockholders is limited to the business brought before the meeting (i) by the Chairman of the Board of Directors, or (ii) at the request of a majority of the Whole Board, or (iii) as specified in the written request of the holders of 20% of the Voting Stock.

Advance notice of the business to be brought by stockholders before an annual meeting shall be given by such stockholders in the manner provided in the By-Laws of the Corporation.

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal, or adopt any provision inconsistent with, this **Article SIXTH**. For the purposes of this Restated Certificate of Incorporation, "Whole Board" shall mean the total number of Directors which the Corporation would have if there were no vacancies.

SEVENTH: Section 1. Number, Election and Terms of Directors.

Subject to the rights of the holders of any class or series of stock having a preference expressly vested in it by the provisions of **Section 2 of Article FOURTH** with respect to the Preferred Stock, the number of Directors of the Corporation shall be fixed by the By-Laws of the Corporation and may be increased or decreased from time to time in such a manner as may be prescribed by the By-Laws, but in no case shall the number be less than three nor more than fifteen.

The Directors shall be divided into three classes, as nearly equal in number as possible. One class of Directors ("Class I") has been initially elected for a term expiring at the annual meeting of stockholders to be held in 1994, another class ("Class II") has been initially elected for a term expiring at the annual meeting of stockholders to be held in 1995, and another class ("Class III") has been initially elected for a term expiring at the annual meeting of stockholders to be held in 1996 with members of each class to hold office until their successors are elected and qualified. At each succeeding annual meeting of the stockholders of the Corporation, the successors of the class of Directors whose term expires at that meeting shall be elected by plurality vote of all votes cast at such meeting to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election.

Section 2. Stockholder Nomination of Director Candidates.

Advance notice of stockholder nominations for the election of Directors shall be given by such stockholders in the manner provided in the By-Laws of the Corporation.

Section 3. Newly Created Directorships and Vacancies.

Subject to the rights of the holders of any class or series of stock having a preference expressly vested in it by the provisions of **Section 2 of Article FOURTH** with respect to the Preferred Stock, newly created directorships resulting from any increase in the number of directors and any vacancy on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled solely by the affirmative vote of a majority of the remaining Directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining Director. Any Director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of Directors in which the new directorship was created or the vacancy occurred and until such Director's successor shall have been elected and qualified. No decrease in the number of Directors constituting the Board of Directors shall shorten the term of an incumbent Director.

Section 4. Removal of Directors.

Subject to the rights of the holders of any class or series of stock having a preference expressly vested in it by the provisions of **Section 2 of Article FOURTH** with respect to the Preferred Stock, any Director may be removed from office only by the stockholders in the manner provided in this **Section 4 of Article SEVENTH**. At any annual meeting of the stockholders of the Corporation or at any special meeting of the stockholders of the Corporation, the notice of which shall state that the removal of a Director or Directors is among the purposes of the meeting, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, may remove such Director or Directors. In any vote required by or provided for in this **Article SEVENTH**, each share of Voting Stock shall have the number of votes granted to it generally in the election of Directors.

Section 5. Amendment.

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, this **Article SEVENTH**.

EIGHTH: No Director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director; provided, however, that a Director of the Corporation shall be liable **(i)** for 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 knowing violation of law, **(iii)** to the extent provided under **Section 174** of the Delaware General Corporation Law, relating to prohibited dividends or distributions or the repurchase or redemption of stock, or **(iv)** for any transaction from which the Director derives an improper personal benefit. If the Delaware General Corporation Law is hereafter amended to permit further limitation on or elimination of the personal liability of the Corporation's Directors for breach of fiduciary duty, then a Director of the Corporation shall be exempt from such liability for any such breach to the fullest extent permitted by the Delaware General Corporation Law as so amended from time to time. Any repeal or modification of the foregoing provisions of this **Article EIGHTH**, or the adoption of any provision inconsistent herewith, shall not adversely affect any right or protection of a Director of the Corporation hereunder in respect of any act or omission of such Director occurring prior to such repeal, modification or adoption of an inconsistent provision.

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, this **Article EIGHTH**.

NINTH: The Corporation shall indemnify, defend and hold harmless 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, investigative or other, including appeals, 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 express written request of the Corporation as a Director, trustee, partner, officer, employee or agent of any corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, to the fullest extent authorized by **Section 145** of the Delaware General Corporation Law, as amended from time to time, against all expenses, liabilities and losses (including attorneys' fees, judgments, fines, ERISA excise taxes and penalties, and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith; provided, however, that, except with respect to proceedings seeking to enforce the rights to indemnification granted herein, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if the proceeding (or part thereof) was specifically authorized by the Board of Directors of the Corporation. Without limiting the generality or the effect of the foregoing, the Corporation may enter into one or more agreements with any person which provide for indemnification on greater or different than that provided in this **Article NINTH**. Any repeal or modification of the provisions of this **Article NINTH**, or the adoption of any provision inconsistent herewith, shall not adversely affect any right or protection existing hereunder immediately prior to such repeal, modification or adoption of an inconsistent provision. Notwithstanding the foregoing, all indemnification provided for in this **Article NINTH** shall not be deemed exclusive of any other rights to which those entitled to receive indemnification or reimbursement hereunder may be entitled under any By-Law of the Corporation, agreement, vote of stockholders or Directors or otherwise.

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, this **Article NINTH**.

TENTH: The Board of Directors of the Corporation, in determining whether the interests of the Corporation, its subsidiaries and its stockholders will be served by any offer of another person to **(i)** make a tender or exchange offer for any equity security of the Corporation or any subsidiary of the Corporation, **(ii)** merge or consolidate the Corporation or any of its subsidiaries with or into another corporation, or **(iii)** purchase or otherwise acquire all or substantially all of the properties and assets of the Corporation or any of its subsidiaries, may take into account factors in addition to potential economic benefits to stockholders. Such factors may include, without limitation, **(a)** comparison of the proposed consideration to be received by stockholders, in relation to the then current market price of the capital stock, to the estimated current value of the Corporation or any of its subsidiaries in a freely negotiated transaction, and to the estimated future value of the Corporation or any of its subsidiaries as an independent entity; **(b)** the impact of such a transaction on the customers and employees of the Corporation or any of its

subsidiaries, and its effect on the communities in which the Corporation or any of its subsidiaries operates; and (c) the ability of the Corporation or any of its subsidiaries to fulfill its objectives and obligations under applicable statutes and regulations.

The terms “offer” as used in this **Article TENTH** includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tender of, a security or interest in a security for value.

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, this **Article TENTH**.

ELEVENTH: The Corporation may not purchase any shares of its stock from any person, entity or group that beneficially owns 5% or more of the Voting Stock at a price exceeding the average closing price for the twenty trading business days prior to the purchase date, unless a majority of the Corporation’s Disinterested Stockholders (as hereinafter defined) approve the transaction. The restrictions on purchases by the Corporation set forth in this **Article ELEVENTH** do not apply (i) to any offer to purchase shares of a class of the Corporation’s stock which is made on the same terms and conditions to all holders of that class of stock, or (ii) to any purchase of stock owned by such a 5% stockholder occurring more than two years after such stockholder’s last acquisition of the Corporation’s stock, or (iii) to any purchase of the Corporation’s stock in accordance with the terms of any stock option or employee benefit plan, or (iv) to any purchase at prevailing market prices pursuant to a stock purchase program.

For purposes of this **Article ELEVENTH**, the term “Disinterested Stockholders” means those holders each of whom owns less than 5% of the Voting Stock.

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, this **Article ELEVENTH**.

TWELFTH: Any vote or votes authorizing liquidation of the Corporation or proceedings for its dissolution may provide, subject to the rights of creditors and the rights expressly provided for particular classes or series of stock for the distribution pro rata among the stockholders of the Corporation of the assets of the Corporation, wholly or in part in kind, whether such assets be in cash or other property, and may authorize the Board of Directors of the Corporation to determine the valuation of the different assets of the Corporation for the purpose of such liquidation and may divide or authorize the Board of Directors to divide such assets or any part thereof among the stockholders of the Corporation, in such manner that every stockholder will receive a proportionate amount in value (determined as aforesaid) of cash or property of the Corporation upon such liquidation or dissolution even though each stockholder may not receive a strictly proportionate part of each such asset.

THIRTEENTH: 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, officers or partners, 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, her or their votes are counted for such purpose, if:

(a) the material facts as to his, her or their interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the Committee thereof, and the Board of Directors or Committee thereof, in good faith authorizes the contract or transaction by a vote sufficient for such purpose without counting the vote of the interested Director or Directors, even though the disinterested Directors be less than a quorum; or

(b) the material facts as to his, her or their interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a Committee thereof, or the stockholders.

Interested Directors shall be counted in determining the presence of a quorum at a meeting of the Board of Directors, or of a Committee thereof which authorizes such contract or transaction. No Director or officer shall be liable to account to the Corporation for any profit realized by him or her from or through such contract or transaction solely by reason of the fact that he or she or any other corporation, partnership, association, or other organization in which he or she is a director or officer, or has a financial interest, was interested in such contract or transaction.

FOURTEENTH: Business Combinations.

Section 1. Higher Vote for Business Combinations.

In addition to any affirmative vote required by law or by this Restated Certificate of Incorporation, unless a Business Combination (as defined below) shall have been approved by the affirmative vote of not less than a majority of the Whole Board, any Business Combination shall require the affirmative vote of the holders of record of outstanding shares representing at least seventy-five percent (75%) of the Voting Stock, voting together as a single class. 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 2. No Effect on Fiduciary Obligations.

Nothing contained in this provision shall be construed to relieve the members of the Board of Directors from any fiduciary obligations imposed by law.

Section 3. Definition.

For purposes of this **Article FOURTEENTH** “Business Combination” means:

(a) any merger or consolidation of the Corporation or any subsidiary; or

(b) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) of all or more than ten percent (10%) of the total assets of the Corporation or any subsidiary, as of the end of such corporation’s recent fiscal year ending prior to the time the determination is made; or

(c) the issuance or transfer by the Corporation or any subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any subsidiary; or

(d) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation, or any spin-off or split-up of any kind of the Corporation or any subsidiary; or

(e) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any subsidiary or any other transaction which has the effect, directly or indirectly, of increasing the percentage of the outstanding shares of (i) any class of equity securities of the Corporation or any subsidiary, or (ii) any class of securities of the Corporation or any subsidiary convertible into equity securities of the Corporation or any subsidiary; or

(f) any agreement, contract or other arrangement providing for any one or more of the actions specified in clauses (a) through (e) of **Section 3** of this **Article FOURTEENTH**.

Section 4. Section 203 of the Delaware General Corporation Law.

Nothing in this **Article FOURTEENTH** or elsewhere in this Restated Certificate of Incorporation shall be construed as a waiver of any rights of the Corporation to the provisions of **Section 203** of the Delaware General Corporation Law dealing with business combinations with interested stockholders; and the Corporation hereby claims the full benefit of all such provisions or any other similar provisions heretofore or hereafter enacted as part of the Delaware General Corporation Law to the fullest extent in addition to the provisions of this **Article FOURTEENTH**.

Section 5. Amendment.

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, this **Article FOURTEENTH**.

FIFTEENTH: The By-Laws of the Corporation may be amended, altered, changed or repealed, and a provision or provisions inconsistent with the provisions of the By-Laws as they exist from time to time may be adopted, only by the majority vote of the Whole Board or by the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class.

Notwithstanding anything contained in this Restated Certificate of incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, this **Article FIFTEENTH**.

SIXTEENTH: The provisions of **Section 2 of Article FOURTH** and the provisions of **Articles FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, TENTH, ELEVENTH, FOURTEENTH, FIFTEENTH** and this **Article SIXTEENTH**, shall not be amended, altered, changed or repealed, and no provision inconsistent with any of them shall be adopted, except by the affirmative vote of the holders of at least seventy-five percent (75%) of the Voting Stock, voting together as a single class. The Corporation reserves the right to amend, alter, change or repeal any other provision contained in this Restated Certificate of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders are granted subject to this reservation.

This Restated Certificate of Incorporation was duly adopted in accordance with **Section 245** of the Delaware General Corporation Law.

IN WITNESS WHEREOF, ModusLink Global Solutions, Inc. has caused this Restated Certificate of Incorporation to be signed by Peter L. Gray, its Executive Vice President, General Counsel and Secretary this 29th day of September, 2008.

MODUSLINK GLOBAL SOLUTIONS, INC.

By: /s/ Peter L. Gray
Peter L. Gray, Executive Vice President, General
Counsel and Secretary

**SECOND
AMENDED
AND
RESTATED
BYLAWS
OF
MODUSLINK GLOBAL SOLUTIONS, INC.
(A DELAWARE CORPORATION)
AMENDED AND RESTATED ON SEPTEMBER 29, 2008**

MODUSLINK GLOBAL SOLUTIONS, INC.
(A DELAWARE CORPORATION)
BYLAWS

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ARTICLE I. OFFICES

SECTION 1. REGISTERED OFFICE. The registered office of the Corporation in the State of Delaware is located at 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

SECTION 2. OTHER OFFICES. The Corporation may also have offices at such other places, within or without the State of Delaware, as the Board of Directors may from time to time appoint or the business of the Corporation may require.

ARTICLE II. MEETINGS OF STOCKHOLDERS

SECTION 1. PLACE OF MEETING. Meetings of the Stockholders shall be held either within or without the State of Delaware at such place as the Board of Directors may fix.

SECTION 2. ANNUAL MEETINGS. The annual meeting of stockholders shall be held for the election of directors on such date and at such time as the Board of Directors may fix. Any other business properly brought before the annual meeting of stockholders as provided by applicable law and by these By-Laws may be transacted at the annual meeting.

SECTION 3. SPECIAL MEETINGS.

(a) Special meetings of the stockholders for any purpose or purposes may be called by the Chairman of the Board of Directors, or pursuant to a resolution approved by a majority of the Whole Board (as defined below), and shall be called by the Board of Directors upon receipt of a written request signed by stockholders owning at least 20 percent of the Voting Stock. Any such resolution of the Board of Directors or any such request of stockholders shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting is limited to the purposes stated in the notice of meeting. For the purposes of these bylaws, the term "*Whole Board*" is defined as the total number of directors which the Corporation would have if there were no vacancies. "*Voting Stock*" shall mean the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors. Except in accordance with this SECTION 3(a) and the procedures set forth in SECTION 3(b) of these bylaws, stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders.

(b) Any stockholder seeking to have the Board of Directors call a special meeting of the stockholders pursuant to SECTION 3(a) of these bylaws shall first be required to request in writing that the Board of Directors fix a record date for the purpose of determining the stockholders entitled to request the Board of Directors to call such special meeting, which request shall be in proper form and delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation. Within ten (10) days after receipt of a request in proper form and otherwise in compliance with this SECTION 3(b) from any such stockholder, the Board of Directors shall adopt a resolution fixing a date as the record date for the purpose of determining the stockholders entitled to request the Board of Directors to call such special meeting, which date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board

of Directors. If no resolution fixing a record date has been adopted by the Board of Directors within such ten (10) day period after the date on which such a request is received, the record date in respect thereof shall be the twentieth (20th) day after the date on which such a request is received.

To be in proper form for purposes of this SECTION 3(b), a request by a stockholder for the Board of Directors to fix a record date pursuant to this SECTION 3(b) shall be required to set forth:

(i) As to the stockholder making the request and each other Requesting Person (as defined below), (A) the name and address of the stockholder making the request, as they appear on the Corporation's books and records, and of each other Requesting Person and (B) the class or series and number of shares of capital stock of the Corporation that are, directly or indirectly, owned of record or beneficially (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended, inclusive of the rules and regulations thereunder (the "*Exchange Act*")) by the stockholder making the request or any other Requesting Persons, except that such stockholder and such other Requesting Persons shall in all events be deemed to beneficially own any shares of any class or series of capital stock of the Corporation as to which such stockholder or such other Requesting Persons has a right to acquire beneficial ownership at any time in the future;

(ii) As to the stockholder making such request (or, if different, the beneficial owner or beneficial owners on whose behalf the request is made) and each other Requesting Person, any Disclosable Interests (as defined in SECTION 6(c)(ii) of ARTICLE II, except that for purposes of this SECTION 3(b) the term "Requesting Person" shall be substituted for the term "Proposing Person" in all places it appears in SECTION 6(c)(ii) of ARTICLE II of these bylaws and the disclosure in clause (F) of SECTION 6(c)(ii) of ARTICLE II shall be made with respect to the business proposed to be conducted at the special meeting); and

(iii) As to the purpose or purposes of the special meeting proposed to be specified in the notice of the meeting, a reasonably brief description of the purpose or purposes of the special meeting and the business proposed to be conducted at the special meeting, the reasons for conducting such business at the special meeting and any material interest in such business of the stockholder making the request (or, if different, the beneficial owner or beneficial owners on whose behalf such request is made) and any other Requesting Person.

For purposes of this SECTION 3(b), the term "Requesting Person" shall mean (i) a stockholder making a request for the Board of Directors to set a record date, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the request for the Board of Directors to set a record date is made, and (iii) any affiliate or associate of such stockholder or beneficial owner (as such terms are defined in Rule 12b-2 under the Exchange Act).

For stockholders to request the Board of Directors to call a special meeting of the stockholders pursuant to SECTION 3(a) of these bylaws, stockholders of record as of the record

date fixed by the Board of Directors (or otherwise set in accordance with this SECTION 3(b)) who hold, in the aggregate, more than 20% of the Voting Stock must provide timely notice thereof in writing and in proper form to the Secretary of the Corporation at the principal executive offices of the Corporation. To be timely, stockholder requests seeking the Board of Directors to call a special meeting must be delivered to, or mailed and received at, the principal executive offices of the Corporation not later than the sixtieth (60th) day following the record date fixed by the Board of Directors (or otherwise set in accordance with this SECTION 3(b)). To be in proper form for purposes of this SECTION 3(b), a request by a stockholder or stockholders to the Secretary seeking the Board of Directors to call a special meeting pursuant to SECTION 3(a) and this SECTION 3(b) shall be required to set forth (i) the purpose or purposes of the special meeting proposed to be specified in the notice of the special meeting and the business proposed to be conducted at the special meeting, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration), and (iii) with respect to any stockholder or stockholders submitting a request for the Board of Directors to call a special meeting (except for any stockholder that has submitted such request in response to a solicitation, pursuant to, and in accordance with, Section 14A of the Exchange Act made by way of a solicitation statement filed on Schedule 14A by a stockholder who requested that the Board of Directors fix a record date pursuant to this SECTION 3(b)), the information required to be provided pursuant to this SECTION 3(b) of a Requesting Person.

After receipt by the Corporation of timely requests in proper form from a stockholder or stockholders holding the requisite number of shares to request the Board of Directors to call a special meeting pursuant to SECTION 3(a) of these bylaws, the Board of Directors shall duly call a special meeting of stockholders for a date no later than sixty (60) days after receipt of such requests, for the purpose or purposes specified in the requests received by the Corporation. The Board of Directors shall promptly provide written notice of such special meeting to the stockholders in accordance with SECTION 4 of these bylaws.

In connection with a special meeting called at the request of the stockholders in accordance with this SECTION 3(b), the stockholder or stockholders requesting the Corporation to call the special meeting shall further update and supplement the information previously provided to the Corporation in connection therewith, if necessary, so that the information provided or required to be provided in such notice pursuant to this SECTION 3(b) shall be true and correct as of the record date for the special meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the special meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting or (if practicable, and if not, the first practicable date prior to) any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten (10) business days prior to the special meeting or any adjournment or postponement thereof).

Notwithstanding anything in these bylaws to the contrary, the Board of Directors shall not be required to call a special meeting at the request of the Corporation's stockholders except in accordance with the procedures set forth in this SECTION 3(b). If the Board of Directors shall determine that any request to fix a record date or to call and hold a special meeting was not

properly made in accordance with the provisions of this SECTION 3(b), or the stockholder or stockholders notifying the Corporation to call the special meeting do not otherwise comply with the provisions of this SECTION 3(b), or that the subject matter for which the stockholders request the Board of Directors to call the special meeting is not a proper purpose for action by stockholders under applicable law, then the Board of Directors shall not be required to fix a record date or to call and hold the special meeting. In addition to the requirements of this SECTION 3(b) with respect to stockholders seeking to call special meetings of the stockholders, each Requesting Person shall comply with all requirements of applicable law, including all requirements of the Exchange Act, with respect to such special meeting.

SECTION 4. NOTICE. Written or printed notice of every meeting of stockholders, annual or special, stating the hour, date and place thereof, and, in the case of special meetings, the purpose or purposes for which the meeting is called shall, not less than ten (10) days, or such longer period as shall be provided by law, the Certificate of Incorporation, these bylaws, or otherwise, and not more than sixty (60) days before such meeting, be delivered or mailed to each stockholder entitled to vote thereat, at his address as it appears upon the stock records of the Corporation or, if such stockholder shall have filed with the Secretary of the Corporation a written request that notices intended for him be mailed to some other address, then to the address designated in such request.

SECTION 5. QUORUM AND ADJOURNMENTS. Except as otherwise provided by law or by the Certificate of Incorporation, the presence in person or by proxy at any meeting of stockholders of the holders of a majority of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote thereat, shall be requisite and shall constitute a quorum. If two or more classes of stock are entitled to vote as separate classes upon any question, then, in the case of each such class, a quorum for the consideration of such question shall, except as otherwise provided by law or by the Certificate of Incorporation, consist of a majority in interest of all stock of that class issued, outstanding and entitled to vote. If a majority of the shares of capital stock of the Corporation issued and outstanding and entitled to vote thereat at, or, where a larger quorum is required, such larger quorum, shall not be represented at any meeting of the stockholders, the holders of a majority of the shares present or represented by proxy and entitled to vote thereat shall have the power to adjourn the meeting to another time, or to another time and place, without notice other than announcement of adjournment at the meeting, and there may be successive adjournments for like cause and in like manner until the requisite amount of shares entitled to vote at such meeting shall be represented; *provided, however*, that 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, written notice of the hour, date and place of the adjourned meeting shall be given to each stockholder entitled to vote thereat. At any adjourned meeting any business may be transacted which might have been transacted at the original meeting. Subject to the requirements of law and the Certificate of Incorporation, on any issue on which two or more classes of stock are entitled to vote separately, no adjournment shall be taken with respect to any class for which a quorum is present unless the Chairman of the meeting otherwise directs. At any meeting held to consider matters which were subject to adjournment for want of a quorum at which the requisite amount of shares entitled to vote thereat shall be represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

SECTION 6. NOTICE OF BUSINESS TO BE BROUGHT BEFORE A MEETING

(a) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) brought before the meeting by the Corporation and specified in the notice of meeting given by or at the direction of the Board of Directors, (ii) brought before the meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before the meeting by a stockholder who (A) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this SECTION 6 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) complied with all of the notice procedures set forth in this SECTION 6 as to such business. Except for proposals made in accordance with Rule 14a-8 under the Exchange Act and included in the notice of meeting given by or at the direction of the Board of Directors, the foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. Stockholders seeking to nominate persons for election to the Board of Directors must comply with the notice procedures set forth in SECTION 1 of ARTICLE III of these bylaws, and this SECTION 6 shall not be applicable to nominations except as expressly provided in SECTION 1 of ARTICLE III of these bylaws.

(b) Without qualification, for business to be properly brought before an annual meeting by a stockholder, the stockholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this SECTION 6. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) 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 more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the one hundred twentieth (120th) day prior to such annual meeting and not later than the ninetieth (90th) day prior to such annual meeting or, if later, the tenth (10th) day following the day on which public disclosure of the date of such annual meeting was made by the Corporation (such notice within such time periods, "*Timely Notice*"); *provided further*, that if the ninetieth (90th) day falls on a Saturday or Sunday, the deadline shall be the next business day in the state of Delaware following such ninetieth (90th) day. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of Timely Notice as described above.

(c) To be in proper form for purposes of this SECTION 6, a stockholder's notice to the Secretary pursuant to this SECTION 6 shall be required to set forth:

(i) As to the stockholder providing the notice and each other Proposing Person (as defined below), (A) the name and address of the stockholder providing the notice, as they appear on the Corporation's books and records, and of each other Proposing Person and (B) the class or series and number of shares of the capital stock of

the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by the stockholder providing the notice or any other Proposing Persons, except that such stockholder and such other Proposing Persons shall in all events be deemed to beneficially own any shares of any class or series of the capital stock of the Corporation as to which such stockholder or such other Proposing Persons has a right to acquire beneficial ownership at any time in the future;

(ii) As to the stockholder providing the notice (or, if different, the beneficial owner on whose behalf such business is proposed) and each other Proposing Person, (A) any derivative, swap or other transaction or series of transactions engaged in, directly or indirectly, by such stockholder or beneficial owner, as applicable, or any other Proposing Person, the purpose or effect of which is to give such stockholder or beneficial owner, as applicable, or such other Proposing Person economic risk similar to ownership of shares of any class or series of the capital stock of the Corporation, including due to the fact that the value of such derivative, swap or other transaction is determined by reference to the price, value or volatility of any shares of any class or series of the capital stock of the Corporation, or which derivative, swap or other transaction provides, directly or indirectly, the opportunity to profit from any increase in the price or value of shares of any class or series of the capital stock of the Corporation ("*Synthetic Equity Interests*"), which such Synthetic Equity Interests shall be disclosed without regard to whether (x) such derivative, swap or other transaction conveys any voting rights in such shares to such stockholder or beneficial owner, as applicable, or such other Proposing Person, (y) the derivative, swap or other transaction is required to be, or is capable of being, settled through delivery of such shares or (z) such stockholder or beneficial owner, as applicable, or such other Proposing Person may have entered into other transactions that hedge or mitigate the economic effect of such derivative, swap or other transaction, (B) any proxy (other than a revocable proxy given in response to a solicitation statement filed on Schedule 14A), agreement, arrangement, understanding or relationship pursuant to which such stockholder or beneficial owner, as applicable, or any other Proposing Person has or shares a right to vote any shares of any class or series of the Corporation, (C) any agreement, arrangement, understanding or relationship, including any repurchase or similar so-called "stock borrowing" agreement or arrangement, engaged in, directly or indirectly, by such stockholder or beneficial owner, as applicable, and/or any other Proposing Person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of shares of any class or series of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such stockholder or beneficial owner, as applicable, or such other Proposing Person with respect to the shares of any class or series of the capital stock of the Corporation, or which provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of the shares of any class or series of the Corporation ("*Short Interests*"), (D) any rights to dividends on the shares of any class or series of the capital stock of the Corporation owned beneficially by such stockholder or beneficial owner, as applicable, or any other Proposing Person that are separated or separable from the underlying shares of the Corporation, and (E) performance related fees (other than an asset based fee), if any, that such stockholder or beneficial owner, as applicable, or any other Proposing Person is entitled to based on any increase or decrease in the price or

value of shares of any class or series of the capital stock of the Corporation, and (F) any other information relating to such stockholder or beneficial owner, as applicable, or any other Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies by such stockholder or beneficial owner, as applicable, or such other Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14 of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (F) are referred to as “*Disclosable Interests*”); and

(iii) As to each matter the stockholder proposes to bring before the annual meeting, (A) a reasonably brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of the stockholder providing the notice and/or any other Proposing Person, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration) and (C) a reasonably detailed description of all agreements, arrangements and understandings between or among the stockholder providing the notice, any other Proposing Person, and any other stockholders of the Corporation (including their names) in connection with the proposal of such business by such stockholder (other than a revocable proxy given in response to a solicitation statement filed on Schedule 14A).

For purposes of this SECTION 6, the term “*Proposing Person*” shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner, if different, on whose behalf the business proposed to be brought before the annual meeting is made, and (iii) any affiliate or associate (as such terms are defined in Rule 12b-2 under the Exchange Act) of such beneficial owner.

(d) A stockholder providing notice of business proposed to be brought before an annual meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this SECTION 6 shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to or mailed and received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting or (if practicable, and if not, the first practicable date prior to) any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(e) Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at an annual meeting except in accordance with the procedures set forth in this SECTION 6. The presiding officer of an annual meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with the provisions of this SECTION 6, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

(f) This SECTION 6 is expressly intended to apply to any business proposed to be brought before an annual meeting and, to the extent consistent with Rule 14a-8 under the Exchange Act, any proposal made pursuant to Rule 14a-8 under the Exchange Act. In addition to the requirements of this SECTION 6 with respect to any business proposed to be brought before an annual meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business. This SECTION 6 shall not be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(g) For purposes of these bylaws, "*public disclosure*" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act and the rules and regulations thereunder.

SECTION 7. INSPECTORS. The Board of Directors shall appoint inspectors of election to act as judges of the voting and to determine those entitled to vote at any meeting of stockholders, or any adjournment thereof, in advance of such meeting, but if the Board of Directors fails to make such appointments or if an appointee fails to serve, the presiding officer of the meeting of stockholders may appoint substitute inspectors.

SECTION 8. VOTING. Except as otherwise provided by law or by the Certificate of Incorporation or by a resolution of the Board of Directors adopted in accordance with the Certificate of Incorporation, each stockholder shall be entitled at every meeting of the stockholders to one vote for each share of stock having voting power standing in the name of such stockholder on the books of the Corporation on the record date for the meeting and such votes may be cast in person or by proxy executed in writing (or in such other manner from time to time permitted by the General Corporation Law of the State of Delaware). Every proxy must be duly executed in accordance with these bylaws and evidence thereof shall be filed with the Secretary of the Corporation. 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 with the Secretary of the Corporation. The vote upon any question brought before a meeting of the stockholders may be by voice vote, unless otherwise required by these bylaws or 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. Every vote taken by written ballot shall be counted by the inspectors of election. When a quorum is present at any meeting, the vote of the holders of a majority (or such other percentage as may be specified or required by the Certificate of Incorporation, or by a resolution of the Board of Directors adopted in accordance with SECTION 2 of ARTICLE FOURTH of the Certificate of Incorporation, or by law, or by these bylaws) of the stock which has voting power present in person or represented by proxy and which has actually voted shall decide any question properly brought before such meeting, except the election or removal of directors or as otherwise provided in these bylaws or the Certificate of Incorporation. With respect to any election or questions required to be decided by any class of stock voting as a class, the vote of the holders of a majority (or such other percentage as may be specified or required by the Certificate of Incorporation, or by a resolution of the Board of Directors adopted in accordance with SECTION 2 of ARTICLE FOURTH of the Certificate of Incorporation, or by law, or by these bylaws) of such class of stock present in person or by proxy and which actually voted shall decide any such election or question.

ARTICLE III. NOMINATION OF DIRECTOR CANDIDATES

SECTION 1. NOTICE OF NOMINATIONS TO DIRECTORS.

(a) Subject to the rights of holders of any class or series of stock having a preference over the Common Stock as to dividends, upon liquidation, or to elect additional directors under specified circumstances, nominations of persons for election to the Board of Directors at an annual meeting or at a special meeting (but only if directors are properly to be elected at such special meeting) may be made at such meeting (i) by or at the direction of the Board of Directors, including by any committee or persons appointed by the Board of Directors, or (ii) by any stockholder who (A) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such nomination is proposed to be made, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this SECTION 1 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) complied with the notice procedures set forth in this SECTION 1 as to such nomination. This SECTION 1 shall be the exclusive means for a stockholder to propose any nomination of a person or persons for election to the Board of Directors to be considered by the stockholders at an annual meeting or special meeting.

(b) Without qualification, for nominations to be made at an annual meeting by a stockholder, the stockholder must (i) provide Timely Notice (as defined in SECTION 6(b) of ARTICLE II of these bylaws) thereof in writing and in proper form to the Secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this SECTION 1. Without qualification, if directors are properly to be elected at a special meeting, then for nominations to be made at a special meeting by a stockholder, the stockholder must (i) provide timely notice thereof in writing and in proper form to the Secretary of the Corporation at the principal executive offices of the Corporation, and (ii) provide any updates or supplements to such notice at the times and in the forms required by this SECTION 1. To be timely, a stockholder's notice for nominations to be made at a special meeting by a stockholder must be delivered to or mailed and received at the principal executive offices of the Corporation not earlier than the one hundred twentieth (120th) day prior to such special meeting and not later than the ninetieth (90th) day prior to such special meeting or, if later, the tenth (10th) day following the day on which public disclosure (as defined in SECTION 6(g) of ARTICLE II of these bylaws) of the date of such special meeting was first made. In no event shall any adjournment or postponement of an annual meeting or special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(c) To be in proper form for purposes of this SECTION 1, a stockholder's notice to the Secretary pursuant to this SECTION 1 shall be required to set forth:

(i) As to the stockholder providing the notice and each other Nominating Person (as defined below), (A) the name and address of the stockholder providing the notice, as they appear on the Corporation's books, and of the other Nominating Persons, and, (B) the class or series and number of shares of the capital stock of the Corporation

that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by the stockholder providing the notice or any other Nominating Persons, except that such stockholder and such other Nominating Persons shall in all events be deemed to beneficially own any shares of any class or series of the capital stock of the Corporation as to which such stockholder or such other Proposing Persons has a right to acquire beneficial ownership at any time in the future;

(ii) As to the stockholder providing the notice (or, if different, the beneficial owner or beneficial owners on whose behalf such business is proposed) and each other Nominating Person, any Disclosable Interests (as defined in SECTION 6(c)(ii) of ARTICLE II of these bylaws, except that for purposes of this Section 1 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in SECTION 6(c)(ii) of ARTICLE II of these bylaws and the disclosure in clause (F) of SECTION 6(c)(ii) of ARTICLE II of these Bylaws shall be made with respect to the election of directors at the meeting);

(iii) As to each person whom the stockholder proposes to nominate for election as a director, (A) all information with respect to such proposed nominee that would be required to be set forth in a stockholder's notice pursuant to this SECTION 1 if such proposed nominee were a Nominating Person, (B) all information relating to such proposed nominee that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 under the Exchange Act (including such proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), and (C) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among the stockholder providing the notice (or, if different, the beneficial owner on whose behalf such notice is given) or any Nominating Person, on the one hand, and each proposed nominee, his or her respective affiliates and associates, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such stockholder or beneficial owner, as applicable, and/or such Nominating Person were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant; and

(iv) The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence or lack of independence of such proposed nominee.

For purposes of this SECTION 1, the term "*Nominating Person*" shall mean (i) the stockholder providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner, if different, on whose behalf the nomination proposed to be made at the meeting is made, and (iii) any affiliate or associate of such beneficial owner (as such terms are defined in Rule 12b-2 under the Exchange Act).

(d) A stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this SECTION 1 shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to or mailed and received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting or (if practicable, and if not, the first practicable date prior to) any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(e) Notwithstanding anything in these bylaws to the contrary, no person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this SECTION 1. The presiding officer at the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with the provisions of this SECTION 1, and if he or she should so determine, he or she shall so declare such determination to the meeting and the defective nomination shall be disregarded.

(f) In addition to the requirements of this SECTION 1 with respect to any nomination proposed to be made at a meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to any such nominations.

ARTICLE IV. DIRECTORS

SECTION 1. POWERS. The business and affairs of the Corporation shall be managed by or under the direction of its Board of Directors, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation directed or required to be exercised or done by the stockholders.

SECTION 2. NUMBER, QUALIFICATION. Election and Terms. Except as otherwise fixed by, or pursuant to, the provisions of SECTION 2 of ARTICLE FOURTH of the Certificate of Incorporation relating to the rights of the holders of any class or series of stock having a preference over the Common Stock, the number of directors shall be fixed from time to time by resolution of the Board of Directors, but shall not be less than three nor more than fifteen persons. The directors, other than those who may be elected by the holders of any class or series of stock having a preference over the Common Stock, shall be classified, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, as determined by the Board of Directors. One class (Class I) shall hold office initially for a term expiring at the annual meeting of stockholders to be held in 1994, and another class (Class II) shall hold office initially for a term expiring at the annual meeting of stockholders to be held in 1995, and another class (Class III) shall hold office initially for a term expiring at the annual meeting of stockholders to be held in 1996, with the members of each class to hold office until their successors are elected and qualified. At each succeeding annual meeting of the stockholders of the Corporation, the successors of the class of directors whose term expires at that meeting shall be elected by plurality vote by written ballot to hold office for a term expiring at the annual meeting for stockholders held in the third year following the year of their election.

SECTION 3. REMOVAL. Subject to the rights of the holders of any class or series of stock having a preference over the Common Stock, any director may be removed from office by the stockholders in the manner provided in this SECTION 3 of ARTICLE IV. At any annual meeting of the stockholders of the Corporation or at any special meeting of the stockholders of the Corporation, the notice of which shall state that the removal of a director or directors is among the purposes of the meeting, the affirmative vote of the holders of at least 75 percent of the combined voting power of the outstanding shares of Voting Stock, voting together as a single class, may remove such director or directors.

SECTION 4. VACANCIES AND NEW DIRECTORSHIPS. Except as otherwise fixed by or provided for or pursuant to the provisions of ARTICLE FOURTH of the Certificate of Incorporation relating to the rights of the holders of any class or series of stock having a preference over the Common Stock, vacancies and newly created directorships resulting from any increase in the authorized number of directors shall be filled solely by the affirmative vote of a majority of the directors then in office though less than a quorum, or by a sole remaining director, except as may be required by law. Any director so chosen shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successor shall have been elected and qualified. No decrease in the authorized number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

SECTION 5. MEETINGS. Meetings of the Board of Directors shall be held at such place, within or without the State of Delaware, as may from time to time be fixed by resolution of the Board of Directors or by the Chairman of the Board of Directors, if there be one, the President and as may be specified in the notice or waiver of notice of any meeting. Meetings may be held at any time upon the call of the Chairman of the Board of Directors, if there be one, or the President or any two (2) of the directors in office by oral, telegraphic, telex, telecopy or other form of electronic transmission, or written notice, duly served or sent or mailed to each director not less than twenty-four (24) hours before such meeting, or such shorter time period as the person or persons calling the meeting shall deem appropriate under the circumstances.

Meetings may be held at any time and place without notice if all the directors are present and do not object to the holding of such meeting for lack of proper notice or if those not present shall, in writing or by telegram, telex, telecopy or other form of electronic transmission, waive notice thereof. A regular meeting of the Board of Directors may be held without notice immediately following the annual meeting of stockholders at the place where such meeting is held. Regular meetings of the Board of Directors may also be held without notice at such time and place as shall from time to time be determined by resolution of the Board of Directors.

Members of the Board of Directors or any committee thereof may participate in a meeting of such Board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting pursuant to the foregoing provisions shall constitute presence in person at the meeting.

SECTION 6. VOTES. Except as otherwise provided by law, the Certificate of Incorporation or otherwise, the vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

SECTION 7. QUORUM AND ADJOURNMENT. Subject to SECTION 4 of this ARTICLE IV, and except as otherwise provided by law, the Certificate of Incorporation or otherwise, a majority of the directors shall constitute a quorum for the transaction of business. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time without notice other than announcement of the adjournment at the meeting, and at such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally noticed.

SECTION 8. COMPENSATION. Directors shall receive compensation for their services, as such, and for service on any Committee of the Board of Directors, as fixed by resolution of the Board of Directors and for expenses of attendance at each regular or special meeting of the Board of Directors or any Committee thereof. Nothing in this Section shall be construed to preclude a director from serving the Corporation in any other capacity and receiving compensation therefor.

SECTION 9. ACTION BY CONSENT OF DIRECTORS. 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 of Directors or 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 of Directors, or committee. Such consent shall be treated as a vote adopted at a meeting for all purposes. Such consents may be executed in one or more counterparts and not every director or committee member need sign the same counterpart.

ARTICLE V. COMMITTEES OF DIRECTORS

SECTION 1. EXECUTIVE COMMITTEE. The Board of Directors may, by resolution passed by a majority of the Whole Board, appoint an “*Executive Committee*” of two (2) or more members, to serve at the pleasure of the Board of Directors, to consist of such directors as the Board of Directors may from time to time designate. The Board of Directors shall designate the Chairman of the Executive Committee.

(a) PROCEDURE. The Executive Committee shall, by a vote of a majority of its members, fix its own times and places of meeting, determine the number of its members constituting a quorum for the transaction of business, and prescribe its own rules of procedure, no change in which shall be made save by a majority vote of its members.

(b) RESPONSIBILITIES. During the intervals between the meetings of the Board of Directors except as otherwise provided by the Board of Directors in establishing such Committee or otherwise, the Executive Committee shall possess and may exercise all the powers of the Board in the management and direction of the business and affairs of the Corporation; provided, however, that the Executive Committee shall not have the power:

- (i) to amend or authorize the amendment of the Certificate of Incorporation or these By-Laws;

(ii) to authorize the issuance of stock;

(iii) to authorize the payment of any dividend;

(iv) to adopt an agreement of merger or consolidation of the Corporation or to recommend to the stockholders the sale, lease or exchange of all or substantially all the property and business of the Corporation;

(v) to recommend to the stockholders a dissolution, or a revocation of a dissolution, of the Corporation; or

(vi) to adopt a certificate of ownership and merger pursuant to Section 253 of the Delaware Business Corporation Law.

(c) REPORTS. The Executive Committee shall keep regular minutes of its proceedings, and all action by the Executive Committee shall be reported promptly to the Board of Directors. Such action shall be subject to review, amendment and repeal by the Board of Directors, provided that no rights of third parties shall be adversely affected by such review, amendment or repeal.

(d) APPOINTMENT OF ADDITIONAL MEMBERS. In the absence or disqualification of any member of the Executive Committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

SECTION 2. AUDIT COMMITTEE. The Board of Directors may, by resolution passed by a majority of the Whole Board, appoint an “*Audit Committee*” of two (2) or more members who shall not be officers or employees of the Corporation to serve at the pleasure of the Board of Directors. The Board of Directors shall designate the Chairman of the Audit Committee.

(a) PROCEDURE. The Audit Committee, by a vote of a majority of its members, shall fix its own times and places of meeting, shall determine the number of its members constituting a quorum for the transaction of business, and shall prescribe its own rules of procedure, no change in which shall be made save by a majority vote of its members.

(b) RESPONSIBILITIES. The Audit Committee shall review the annual financial statements of the Corporation prior to their submission to the Board of Directors, shall consult with the Corporation’s independent auditors, and may examine and consider such other matters in relation to the internal and external audit of the Corporation’s accounts and in relation to the financial affairs of the Corporation and its accounts, including the selection and retention of independent auditors, as the Audit Committee may, in its discretion, determine to be desirable.

(c) REPORTS. The Audit Committee shall keep regular minutes of its proceedings, and all action by the Audit Committee shall, from time to time, be reported to the Board of Directors

as it shall direct. Such action shall be subject to review, amendment and repeal by the Board of Directors, provided that no rights of third parties shall be adversely affected by such review, amendment or repeal.

(d) APPOINTMENT OF ADDITIONAL MEMBERS. In the absence or disqualification of any member of the Audit Committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

SECTION 3. OTHER COMMITTEES. The Board of Directors may, by resolution passed by a majority of the Whole Board, at any time appoint one or more other committees, including a compensation committee, from and outside of its own number. Every such committee must include at least one member of the Board of Directors. The Board of Directors may from time to time designate or alter, within the limits permitted by law, the Certificate of Incorporation and this ARTICLE V, if applicable, the duties, powers and number of members of such other committees or change their membership, and may at any time abolish such other committees or any of them.

(a) PROCEDURE. Each committee appointed pursuant to this SECTION 3 shall, by a vote of a majority of its members, fix its own times and places of meeting, determine the number of its members constituting a quorum for the transaction of business, and prescribe its own rules of procedure, no change in which shall be made save by a majority vote of its members.

(b) RESPONSIBILITIES. Each committee appointed pursuant to this SECTION 3, shall exercise the powers assigned to it by the Board of Directors in its discretion.

(c) REPORTS. Each committee appointed pursuant to this SECTION 3 shall keep regular minutes of proceedings, and all action by each such committee shall, from time to time, be reported to the Board of Directors as it shall direct. Such action shall be subject to review, amendment and repeal by the Board of Directors, provided that no rights of third parties shall be adversely affected by such review, amendment or repeal.

(d) APPOINTMENT OF ADDITIONAL MEMBERS. In the absence or disqualification of any member of each committee, appointed pursuant to this SECTION 3, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors (or, to the extent permitted, another person) to act at the meeting in place of any such absent or disqualified member.

SECTION 4. TERM OF OFFICE. Each member of a committee shall hold office until the first meeting of the Board of Directors following the annual meeting of stockholders (or until such other time as the Board of Directors may determine, either in the vote establishing the committee or at the election of such member or otherwise) and until his successor is elected and qualified, or until he sooner dies, resigns, is removed, is replaced by change of membership or becomes disqualified by ceasing to be a director (where membership on the Board of Directors is required), or until the committee is sooner abolished by the Board of Directors.

ARTICLE VI. OFFICERS

SECTION 1. OFFICERS. The Board of Directors shall elect a President, a Secretary and a Treasurer, and, in their discretion, may elect a Chairman of the Board of Directors, a Vice Chairman of the Board of Directors, a Controller, and one or more Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Secretaries, Assistant Treasurers and Assistant Controllers as they deem necessary or appropriate. Such officers shall be elected annually by the Board of Directors at its first meeting following the annual meeting of stockholders (or at such other meeting as the Board of Directors determines), and each shall hold office for the term provided by the vote of the Board of Directors, except that each will be subject to removal from office in the discretion of the Board of Directors as provided herein. The powers and duties of more than one office may be exercised and performed by the same person.

SECTION 2. VACANCIES. Any vacancy in any office may be filled for the unexpired portion of the term by the Board of Directors, at any regular or special meeting.

SECTION 3. CHAIRMAN OF THE BOARD. The Chairman of the Board of Directors, if elected, shall be a member of the Board of Directors and shall preside at its meetings. He shall advise and counsel with the President, and shall perform such duties as from time to time may be assigned to him by the Board of Directors.

SECTION 4. PRESIDENT. The President shall be the chief executive officer of the Corporation, unless the Board of Directors designates the Chairman of the Board of Directors or another officer as chief executive officer. Subject to the direction of the Board of Directors, the President shall have and exercise direct charge of and general supervision over the business and affairs of the Corporation and shall perform all duties incident to the office of the President of a corporation and such other duties as from time to time may be assigned to him by the Board of Directors. The President may but need not be a member of the Board of Directors.

SECTION 5. EXECUTIVE VICE PRESIDENTS AND VICE PRESIDENTS. Each Executive Vice President and Vice President shall have and exercise such powers and shall perform such duties as from time to time may be assigned to him by the Board of Directors or the President.

SECTION 6. SECRETARY. The Secretary shall keep the minutes of all meetings of the stockholders and of the Board of Directors in books provided for the purpose, he shall see that all notices are duly given in accordance with the provisions of law and these bylaws; he shall be custodian of the records and of the corporate seal or seals of the Corporation; he shall see that the corporate seal is affixed to all documents the execution of which, on behalf of the Corporation under its seal, is duly authorized, and, when the seal is so affixed, he may attest the same; he may sign, with the President, an Executive Vice President or a Vice President, certificates of stock of the Corporation; and, in general, he shall perform all duties incident to the office of Secretary of a corporation, and such other duties as from time to time may be assigned to him by the Board of Directors.

SECTION 7. ASSISTANT SECRETARIES. The Assistant Secretaries in order of their seniority shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties as the Board of Directors shall prescribe or as from time to time may be assigned by the Secretary.

SECTION 8. TREASURER. The Treasurer shall have charge of and be responsible for all funds, securities, receipts and disbursements of the Corporation, and shall deposit, or cause to be deposited, in the name of the Corporation, all monies or other valuable effects in such banks, trust companies or other depositories as shall, from time to time, be selected by the Board of Directors; he may endorse for collection on behalf of the Corporation checks, notes and other obligations he may sign receipts and vouchers for payments made to the Corporation; he may sign checks of the Corporation, singly or jointly with another person as the Board of Directors may authorize, and pay out and dispose of the proceeds under the direction of the Board of Directors he shall render to the President and to the Board of Directors, whenever requested, an account of the financial condition of the Corporation; he may sign, with the President, or an Executive Vice President or a Vice President, certificates of stock of the Corporation and in general, shall perform all the duties incident to the office of treasurer of a corporation, and such other duties as from time to time may be assigned to him by the Board of Directors.

SECTION 9. ASSISTANT TREASURERS. The Assistant Treasurers in order of their seniority shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties as the Board of Directors shall prescribe or as from time to time may be assigned by the Treasurer.

SECTION 10. CONTROLLER. The Controller, if elected and so designated, shall be the chief accounting officer of the Corporation. In general, he shall perform all duties incident to the office of a controller of a corporation, and in the absence of or disability of the Treasurer or any Assistant Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties as the Board of Directors shall prescribe or as from time to time may be assigned by the President or the Treasurer.

SECTION 11. ASSISTANT CONTROLLERS. The Assistant Controllers in order of their seniority shall, in the absence or disability of the Controller, perform the duties and exercise the powers of the Controller and shall perform such other duties as the Board of Directors shall prescribe or as from time to time may be assigned by the Controller.

SECTION 12. SUBORDINATE OFFICERS. The Board of Directors may appoint such subordinate officers as it may deem desirable. Each such officer shall hold office for such period, have such authority and perform such duties as the Board of Directors may prescribe. The Board of Directors may, from time to time, authorize any officer to appoint and remove subordinate officers and to prescribe the powers and duties thereof.

SECTION 13. COMPENSATION. The Board of Directors, or a duly authorized executive compensation committee of the Board of Directors, shall fix the compensation of all officers of the Corporation. It may authorize any officer, upon whom the power of appointing subordinate officers may have been conferred, to fix the compensation of such subordinate officers.

SECTION 14. REMOVAL. Any officer of the Corporation may be removed, with or without cause, by action of the Board of Directors.

SECTION 15. BONDS. The Board of Directors may require any officer of the Corporation to give a bond to the Corporation, conditional upon the faithful performance of his duties, with one or more sureties and in such amount as may be satisfactory to the Board of Directors.

ARTICLE VII. INDEMNIFICATION

SECTION 1. INDEMNIFICATION.

(a) The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is a party or is threatened to be made a party or is otherwise involved in 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 a person for whom he is the legal representative, is or was a director or officer of the Corporation, or is or was serving at the express written request of the Corporation as a director, officer, trustee, partner, employee or agent (each such person and each such director and officer of the Corporation is referred to herein as a "Covered Person") of another corporation, partnership, joint venture, trust or other enterprise or non-profit entity against all liability, losses, expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his 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 reasonably believed to be in or not opposed to the best interest of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the express written request of the Corporation as a director, officer, trustee, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or non-profit entity against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of his duty to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

(c) To the extent that any person referred to in PARAGRAPHS (a) or (b) of this SECTION 1 has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to therein, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

SECTION 2. AUTHORIZATION. Any indemnification under SECTION 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, trustee, partner, or officer is proper in the circumstances because he has met the applicable standard of conduct set forth in SECTION 1 of this ARTICLE VII. Such determination shall be made in accordance with Section 145(d) of the Delaware General Corporation Law.

SECTION 3. EXPENSE ADVANCE. Expenses (including attorneys' fees) incurred by an officer or director of the Corporation 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 as authorized by the Board of Directors in the manner provided in SECTION 2 of this ARTICLE VII upon receipt of an undertaking by or on behalf of such officer or director to repay such amount, if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this ARTICLE VII. Such expenses (including attorneys' fees) incurred by other employees or agents of the Corporation may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.

SECTION 4. NONEXCLUSIVITY. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this ARTICLE VII shall not be deemed exclusive of any other rights to which any person seeking indemnification or advancement of expenses may be entitled under any statute, 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.

SECTION 5. INSURANCE. The Corporation shall have power 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, trustee, partner, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or non-profit entity against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this ARTICLE VII OR Section 145 of the Delaware General Corporation Law.

SECTION 6. "THE CORPORATION." For the purposes of this Article, references to "*the Corporation*" shall include the resulting corporation and, to the extent that the Board of Directors of the resulting corporation so decides, all constituent corporations (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 and officers so that any person who is or was a director or officer of such a constituent corporation or is or was serving at the request of such constituent corporation as director, trustee, partner, or officer of another corporation, partnership, joint venture, trust or other enterprise or non-profit entity shall stand in the same position under the provisions of this ARTICLE VII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

SECTION 7. OTHER INDEMNIFICATION. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, trustee, partner, or officer of another corporation, partnership, joint venture, trust or other enterprise or non-profit entity shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust or other enterprise or non-profit entity or from insurance.

SECTION 8. OTHER DEFINITIONS. For purposes of this ARTICLE VII, references to "*other enterprises*" shall include employee benefit plans; references to "*taxes*" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "*servicing at the request of the Corporation*" shall include any service as a director, trustee, or officer of the Corporation which imposes duties on, or involves services by, such director, trustee, 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 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 9. CONTINUATION OF INDEMNIFICATION. The rights to indemnification and to advancement of expenses provided by, or granted pursuant to, this Article shall continue notwithstanding that the person has ceased to be a Covered Person and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributees of such person.

SECTION 10. AMENDMENT OR REPEAL. The provisions of this ARTICLE VII shall constitute a contract between the Corporation, on the one hand, and, on the other hand, each individual who serves or has served as a Covered Person (whether before or after the adoption of these bylaws), in consideration of such person's performance of such services, and pursuant to this ARTICLE VII the Corporation intends to be legally bound to each such current or former Covered Person. With respect to current and former Covered Persons, the rights conferred under this ARTICLE VII are present contractual rights and such rights are fully vested, and shall be deemed to have vested fully, immediately upon adoption of these bylaws. With respect to any Covered Persons who commence service following adoption of these bylaws, the rights conferred under this provision shall be present contractual rights and such rights shall fully vest, and be deemed to have vested fully, immediately upon such Covered Person's service in the capacity which is subject to the benefits of this Article VII.

ARTICLE VIII. CERTIFICATES OF STOCK

SECTION 1. FORM AND EXECUTION OF CERTIFICATES. The interests of each stockholder of the Corporation may be evidenced by a certificate or certificates for shares of stock in such form as the Board of Directors may from time to time prescribe. Shares of the stock of the Corporation may be certificated or uncertificated, as provided under the Delaware General Corporation Law. The certificates of stock of each class, if any, shall be consecutively numbered and signed by the Chairman or Vice Chairman of the Board of Directors, if any, or the President, or an Executive Vice President or a Vice President and by the Secretary, or an Assistant Secretary, or the Treasurer or an Assistant Treasurer of the Corporation, and may be countersigned and registered in such manner as the Board of Directors may by resolution prescribe, and shall bear the corporate seal or a printed or engraved facsimile thereof. Where any such certificate is signed by a transfer agent or transfer clerk acting on behalf of the Corporation, the signatures of any such Chairman, Vice Chairman, President, Executive Vice President, Vice President, Treasurer, Assistant Treasurer, Secretary or Assistant Secretary may be facsimiles, engraved or printed. In case any officer or officers, who shall have signed, or whose facsimile signature or signatures shall have been used on, any such certificate or certificates, shall cease to be such officer or officers, whether because of death, resignation or otherwise, before such certificate or certificates shall have been delivered by the Corporation, such certificate or certificates may nevertheless be issued and delivered by the Corporation as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures shall have been used thereon had not ceased to be such officer or officers.

Every certificate for shares of stock which are subject to any restriction on transfer pursuant to law, the Certificate of Incorporation, these bylaws, or any agreement to which the Corporation is a party, shall have the restriction noted conspicuously on the certificate, and shall also set forth, on the face or back, either the full text of the restriction or a statement of the existence of such restriction and (except if such restriction is imposed by law) a statement that the Corporation will furnish a copy thereof to the holder of such certificate upon written request and without charge.

Every certificate issued when the Corporation is authorized to issue more than one class or series of stock shall set forth on its face or back either the full text of the preferences, voting powers, qualifications, and special and relative rights of the shares of each class and series authorized to be issued, or a statement of the existence of such preferences, powers, qualifications and rights, and a statement that the Corporation will furnish a copy thereof to the holder of such certificate upon written request and without charge.

SECTION 2. TRANSFER OF SHARES. The shares of stock of the Corporation shall be transferred on the books of the Corporation by the holder thereof in person or by his attorney lawfully constituted, upon surrender for cancellation of certificates (if such shares are certificated), or upon proper instructions from the holder of uncertificated shares, for the same number of shares, with an assignment and power of transfer endorsed thereon or attached hereto, duly executed, with such proof or guaranty of the authenticity of the signature as the Corporation

or its agents may reasonably require. The Corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, save as expressly provided by law or by the Certificate of Incorporation. It shall be the duty of each stockholder to notify the Corporation of his post office address.

SECTION 3. FIXING DATE FOR DETERMINATION OF STOCKHOLDERS OF RECORD. In addition to the powers established in SECTION 3 of ARTICLE II, 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 profits, 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 a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date: (a) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, the Certificate of Incorporation or otherwise, not be more than sixty (60) nor less than ten (10) days before the date of such meeting; and (b) in the case of any other action, shall not be more than sixty (60) days prior to such other action. If no record date is fixed: (a) 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; and (b) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors 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 of Directors may fix a new record date for the adjourned meeting.

SECTION 4. LOST OR DESTROYED CERTIFICATES. In case of the loss or destruction of any certificate of stock, a new certificate may be issued under the following conditions:

(a) The owner of said certificate shall file with the Secretary or any Assistant Secretary of the Corporation an affidavit giving the facts in relation to the ownership, and in relation to the loss or destruction of said certificate, stating its number and the number of shares represented thereby; such affidavit shall be in such form and contain such statements as shall satisfy the President, any Executive Vice President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer, that said certificate has been accidentally destroyed or lost, and that a new certificate (or uncertificated shares) ought to be issued in lieu thereof. Upon being so satisfied, any such officer may require such owner to furnish the Corporation a bond in such penal sum and in such form as he may deem advisable, and with a surety or sureties approved by him, to indemnify and save harmless the Corporation from any claim, loss, damage or liability which may be occasioned by the issuance of a new certificate (or uncertificated shares) in lieu thereof. Upon such bond being so filed, if so required, a new certificate for the same number of shares shall be issued to the owner of the certificate so lost or destroyed or such same number of uncertificated shares shall be issued, and the transfer agent

and registrar, if any, of stock shall countersign and register such new certificate (if such shares are certificated) upon receipt of a written order signed by any such officer, and thereupon the Corporation will save harmless said transfer agent and registrar. In case of the surrender of the original certificate, in lieu of which a new certificate (or uncertificated shares) has been issued, or the surrender of such new certificate, for cancellation, the bond of indemnity given as a condition of the issue of such new certificate (or uncertificated shares) may be surrendered; or

(b) The Board of Directors of the Corporation may by resolution authorize and direct any transfer agent or registrar of stock of the Corporation to issue and register respectively from time to time without further action or approval by or on behalf of the Corporation new certificates of stock, or uncertificated shares, to replace certificates reported lost, stolen or destroyed upon receipt of an affidavit of loss and bond of indemnity in form and amount and with surety satisfactory to such transfer agent or registrar in each instance or upon such terms and conditions as the Board of Directors may determine.

SECTION 5. UNCERTIFICATED SHARES. The Board of Directors of the Corporation may by resolution provide that one or more of any or all classes or series of the stock of the Corporation shall be uncertificated shares, subject to the provisions of Section 158 of the Delaware General Corporation Law.

ARTICLE IX. EXECUTION OF DOCUMENTS

SECTION 1. EXECUTION OF CHECKS, NOTES, ETC. All checks and drafts on the Corporation's bank accounts and all bills of exchange and promissory notes, and all acceptances, obligations and other instruments for the payment of money, shall be signed by such officer or officers, or agent or agents, as shall be thereunto authorized from time to time by the Board of Directors, which may in its discretion authorize any such signatures to be by facsimile.

SECTION 2. EXECUTION OF CONTRACTS, ASSIGNMENTS, ETC. Unless the Board of Directors shall have otherwise provided generally or in a specific instance, all contracts, agreements, endorsements, assignments, transfers, stock powers, or other instruments shall be signed by the Chairman of the Board of Directors, the President, any Executive Vice President, any Senior Vice President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer. The Board of Directors may, however, in its discretion, require any or all such instruments to be signed by any two or more of such officers, or may permit any or all of such instruments to be signed by such other officer or officers, agent or agents, as it shall thereunto authorize from time to time.

SECTION 3. EXECUTION OF PROXIES. The Chairman of the Board of Directors, the President, any Executive Vice President, any Senior Vice President, or any Vice President and the Secretary, the Treasurer, any Assistant Secretary or any Assistant Treasurer, or any other officer designated by the Board of Directors, may sign on behalf of the Corporation proxies to vote upon shares of stock of other companies standing in the name of the Corporation.

ARTICLE X. INSPECTION OF BOOKS

The Board of Directors shall determine from time to time whether, and if allowed, to what extent and at what time and places and under what conditions and regulations, the accounts and books of the Corporation (except such as may by law be specifically open to inspection) or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the Corporation, except as conferred by the laws of the State of Delaware, unless and until authorized so to do by resolution of the Board of Directors of the Corporation.

ARTICLE XI. FISCAL YEAR

The fiscal year of the Corporation shall be determined from time to time by vote of the Board of Directors.

ARTICLE XII. SEAL

The seal of the Corporation shall, subject to alteration by the Board of Directors, consist of a flat-faced circular die with the word "Delaware," together with the name of the Corporation and the year of incorporation, cut or engraved thereon.

ARTICLE XIII. AMENDMENTS

Subject to the provisions of the Certificate of Incorporation, these bylaws may be amended, altered, changed or repealed, and a provision or provisions inconsistent with the provisions of these bylaws as they exist from time to time may be adopted, only by the majority vote of the Whole Board or by the affirmative vote of the holders of at least 75% of the Voting Stock, voting together as a single class.

PRESS RELEASE

CMGI REPORTS 2008 FOURTH QUARTER AND FISCAL YEAR FINANCIAL RESULTS

*– Revenue Increases 9.4% for the Fourth Quarter –
– Results are Preliminary Pending the Finalization of an Estimated Non-Cash Goodwill Impairment Charge –*

WALTHAM, Mass. September 29, 2008 — ModusLink Global Solutions, Inc. (formerly known as CMGI, Inc.) (NASDAQ: CMGI) today reported preliminary financial results for its 2008 fourth quarter and fiscal year ended July 31, 2008.

Results for the fourth quarter and full fiscal year are preliminary based on the inclusion of an estimated non-cash goodwill impairment charge of \$12 million related to its European segment. The amount of the non-cash charge will be finalized in conjunction with the completion of the Company's Form 10-K filing.

As announced in a separate press release issued today, the Company has changed its name from CMGI, Inc. to ModusLink Global Solutions, Inc. Its common stock will trade under the Nasdaq Global Select Market symbol "MLNK" effective at the opening of trading on September 30, 2008.

Preliminary Fourth Quarter Financial Summary

- Net revenue of \$276.3 million, an increase of 9.4% from the fourth quarter of fiscal 2007
- Gross margin, as a percentage of revenue, of 10.4% compared with 12.1% in the same period during the prior year
- Selling, General and Administrative expense of \$44.1 million. Excluding the estimated goodwill impairment charge, SG&A expense was \$32.1 million or 11.6% of revenue, compared to SG&A expense of \$33.0 million or 13.1% of revenue in the fourth quarter of the prior year
- Operating loss of \$15.4 million, compared with an operating loss of \$2.4 million in the fourth quarter of fiscal 2007
- Net loss from continuing operations of \$18.6 million or \$0.39 per share, compared to a net loss from continuing operations of \$6.2 million, or \$0.13 per share, in the same period last year
- Net loss of \$22.7 million, or \$0.48 per share, compared to a net loss of \$6.2 million, or \$0.13 per share, in the same period last year
- Non-GAAP operating income of \$6.3 million compared with \$7.2 million in the fourth quarter of 2007

Preliminary Fourth Quarter Consolidated Financial Results

“During the fourth quarter, we grew our business and concluded a challenging but successful year in the transformation of our company,” said Joseph C. Lawler, Chairman, President and Chief Executive Officer of CMGI, now ModusLink Global Solutions. “In the fourth quarter, we continued to build the Company’s sales pipeline, driven by the introduction of new solutions, implementation of targeted lead generation programs and improved penetration of our targeted vertical markets. Despite the challenges of the current economic environment that resulted in lower volumes in some existing accounts, ModusLink Global Solutions is very well positioned for long-term growth as we continue to execute our strategy and fulfill the vision of the company.”

The Company reported net revenue of \$276.3 million for the fourth quarter of fiscal 2008, an increase of 9.4% compared with net revenue of \$252.6 million reported for the same period one year ago. The increase in revenue was attributed to organic growth, primarily driven by new client engagements, and contributions of \$13.7 million from the recently acquired companies Open Channel Solutions and PTS Electronics. Adjusted for two previously announced discontinued programs, net revenue of \$276.3 million would have compared with net revenue of \$240.2 million in the prior year period.

Gross margin was \$28.7 million, or 10.4% of revenue, in the fourth quarter of fiscal 2008, compared with \$30.5 million, or 12.1% of revenue, in the fourth quarter of fiscal 2007. The decrease in gross margin as a percentage of revenue was due to increased start-up costs related to new business engagements and lower volumes from some existing clients.

Selling, General and Administrative expense for the fourth quarter was \$44.1 million. Excluding the goodwill impairment charge, SG&A expense was \$32.1 million, or 11.6% of revenue, compared to \$33.0 million, or 13.1% of revenue, in the fourth quarter of the prior year. The decrease in SG&A expenses excluding the goodwill impairment charge was primarily due to lower restructuring and lower compensation related costs, partially offset by increases attributable to the inclusion of the selling, general and administrative costs of the recently acquired companies.

The estimated non-cash goodwill impairment charge of \$12 million is related to the Company’s European operations for which the goodwill balance had been \$30.7 million. The goodwill subject to impairment was recorded upon the 2004 acquisition of Modus Media, Inc. In accordance with FASB Statement No. 142 “*Goodwill and Other Intangible Assets*” and the Company’s practice, the carrying value of the goodwill is tested for impairment annually in the fourth quarter. The finalization of the estimated charge, and consequently the Company’s fourth quarter and full year operating results, is subject to change pending the completion of the Company’s valuation procedures and analysis, which it expects to complete in conjunction with the preparation and filing of its Annual Report on Form 10-K.

“The Company’s European operations and related financial results did not show the level of improvement in fiscal 2008 that management had expected,” said Steven G. Crane, Chief Financial Officer. “Based on this, the Company in

connection with the preparation of its annual financial statements determined that it was required to take a non-cash goodwill impairment charge. While this goodwill impairment charge is required by accounting rules, we retain our long term positive view of our European operations, as Europe represents an important part of our overall strategy and we remain committed to continuing to grow our business in the region.”

Net loss from continuing operations for the fourth quarter was \$18.6 million, or \$0.39 per share, compared to net loss from continuing operations of \$6.2 million, or \$0.13 per share, for the same period in fiscal 2007. Net loss for the fourth quarter of 2008 was \$22.7 million or \$0.48 per share, compared to net loss of \$6.2 million or \$0.13 per share for the same period in the prior year.

Fiscal 2008 fourth quarter results included a loss from discontinued operations of \$4.2 million, or \$0.09 per share, primarily due to updated sublease assumptions for a facility no longer being utilized for operations by the Company.

Excluding net charges related to depreciation, amortization of intangibles, stock-based compensation, restructuring and the impact of the estimated non-cash goodwill impairment charge, the Company reported non-GAAP operating income of \$6.3 million for the fourth quarter of fiscal 2008 versus non-GAAP operating income of \$7.2 million for the same period in fiscal 2007.

Preliminary Fiscal Year 2008 Financial Summary

- Net revenue of \$1,068 million, compared to net revenue of \$1,143 million in fiscal 2007
- Gross margin, as a percentage of revenue, increased to 12.9% from 11.5% in the previous year
- Selling, General and Administrative expense of \$135.2 million. Excluding the estimated goodwill impairment charge, SG&A expense was \$123.2 million, or 11.5% of revenue, compared to \$116.3 million, or 10.2% of revenue, in fiscal 2007
- Operating income of \$2.4 million, compared to operating income of \$14.8 million in the prior fiscal year
- Net income from continuing operations of \$15.3 million, or \$0.32 per diluted share, compared to net income from continuing operations of \$49.1 million, or \$1.00 per diluted share, in fiscal 2007
- Net income was \$11.1 million, or \$0.23 per diluted share, compared to \$49.4 million, or \$1.01 per diluted share, in fiscal 2007
- Non-GAAP operating income was \$46.2 million compared with non-GAAP operating income of \$44.4 million for the prior fiscal year

Preliminary Fiscal Year Consolidated Financial Results

The Company reported net revenue of \$1,068 million for the fiscal year ended July 31, 2008, compared to \$1,143 million reported for the 2007 fiscal year. Adjusted for two previously announced discontinued programs, net revenue of \$1,068 million would have compared with net revenue of \$1,005 million in the prior year period on the same basis.

Gross margin was \$137.6 million, or 12.9% of revenue for fiscal 2008, compared with \$131.1 million, or 11.5% of revenue for fiscal 2007. As a percentage of revenue, gross margin improvement was attributed to revenue from engagements in target vertical markets and higher margin services, as well as the realization of operating efficiencies.

Selling, General and Administrative expense for fiscal 2008 was \$135.2 million. Excluding the estimated goodwill impairment charge, SG&A expense for the year was \$123.2 million, or 11.5% of revenue, compared to \$116.3 million, or 10.2% of revenue, in fiscal 2007. The increase in SG&A during the period primarily reflects continued investment in the Company's ERP system and the additional Selling, General and Administrative expenses associated with Open Channel Solutions, PTS Electronics (each of which was acquired during fiscal 2008) and the Company's Japan operations (which were acquired at the end of the third quarter of fiscal 2007).

Net income from continuing operations for fiscal 2008 was \$15.3 million, or \$0.32 per diluted share, compared to net income from continuing operations of \$49.1 million, or \$1.00 per diluted share, for fiscal 2007. Net income for fiscal 2008 was \$11.1 million, or \$0.23 per diluted share, compared to net income of \$49.4 million, or \$1.01 per diluted share, for the prior year.

Fiscal 2008 results included a loss from discontinued operations of \$4.2 million, or \$0.09 per share, compared with income from discontinued operations of \$0.3 million, or \$0.01 per diluted share, in fiscal 2007.

Net income for fiscal 2008 included \$19.1 million of investment gains from liquidity events from @Ventures, compared with gains of \$35.0 million in fiscal 2007.

Excluding the effects of charges related to depreciation, amortization of intangibles, stock-based compensation, restructuring and the impact of the estimated non-cash goodwill impairment charge, the Company reported non-GAAP operating income of \$46.2 million for the 2008 fiscal year compared with non-GAAP operating income of \$44.4 million for the prior fiscal year.

As of July 31, 2008, the Company had working capital of approximately \$238.7 million compared with \$320.2 million at July 31, 2007. Included in working capital as of July 31, 2008 were cash, cash equivalents and marketable securities totaling \$162.1 million compared to \$282.3 million at July 31, 2007. The Company concluded the year with no outstanding bank debt.

"Our balance sheet continues to be very strong and provides a solid foundation for growth," said Crane. "During the year, we utilized cash to make strategic acquisitions, reduce our debt and return \$35 million to the shareholders through a stock buyback program."

“We are positioned for growth in fiscal 2009,” continued Lawler. “Our sales pipeline is the strongest we have seen at the company. However, we remain cognizant of the uncertain global economic condition and its impact on consumer demand in the technology markets we serve. As we enter the new fiscal year, we continue to be focused on revenue growth, expanding existing client relationships through the introduction of new solutions and improving operational efficiencies. We are optimistic that our strategy will create significant long-term value for our shareholders.”

Outlook

Based on the strength of its sales pipeline and expectations for increasing demand for the Company’s services, and given the uncertain economic environment, the Company currently expects revenue in fiscal 2009 to grow in the range of 10% to 12% over fiscal year 2008 revenue. The Company expects this revenue growth to be weighted toward the second, third and fourth quarters of fiscal 2009.

Conference Call Information

As previously announced, ModusLink Global Solutions, Inc. will hold a conference call to discuss its 2008 fourth quarter and fiscal year preliminary results at 5:00 p.m. ET on September 29, 2008. Investors can listen to the conference call on the Internet at www.ir.cmg.com. To listen to the live call, go to the Website at least 15 minutes prior to the start time to download and install the necessary audio software.

Non-GAAP Information

The Company believes that its non-GAAP measure of operating income/(loss) (“non-GAAP operating income/(loss)”) provides investors with a useful supplemental measure of the Company’s operating performance by excluding the impact of non-cash charges and restructuring activities. Each of the excluded items was excluded because it may be considered to be of a non-operational or non-cash nature. Historically, ModusLink has recorded significant impairment and restructuring charges. These charges, as well as charges related to depreciation, amortization of intangible assets and stock-based compensation, have been excluded for the purpose of enhancing the understanding by both management and investors of the underlying baseline operating results and trends of the business, which management uses to evaluate our financial performance for purposes of planning and forecasting future periods. Non-GAAP operating income/(loss) does not have any standardized definition and, therefore, is unlikely to be comparable to similar measures presented by other reporting companies. Non-GAAP operating income/(loss) should not be evaluated in isolation of, or as a substitute for, the Company’s financial results prepared in accordance with United States generally accepted accounting principles. The Company’s usage of non-GAAP operating income/(loss), and the underlying methodology in excluding certain charges, is not necessarily an indication of the results of operations that may be expected in the future, or that the Company will not, in fact, incur such charges in future periods. A table reconciling ModusLink’s non-GAAP operating income/(loss) to its GAAP operating income/(loss) and its GAAP net income/(loss) is included in the statement of operations information in this release.

About ModusLink Global Solutions, Inc. ModusLink Global Solutions, Inc. (formerly known as CMGI, Inc.), is a leader in global supply chain business process management. The Company executes critical processes for clients in the high technology and communications industries to provide competitive differentiation and enable new channel and new market opportunities. ModusLink Global Solutions' integrated portfolio of supply chain outsourcing and technology solutions span four core competencies: supply chain, aftermarket, e-Business and entitlement management. The Company has headquarters in Waltham, Massachusetts and more than 30 facilities in 13 countries – giving it the largest global footprint in the industry. In addition, ModusLink Global Solutions' venture capital business, @Ventures, invests in a variety of technology ventures. For additional information, visit www.moduslink.com.

ModusLink is a registered trademark of ModusLink Corporation and CMGI and ModusLink Global Solutions are registered trademarks of ModusLink Global Solutions, Inc. All other company names and products are trademarks or registered trademarks of their respective companies.

All share and per share data for the prior year period which appears in this press release and the accompanying tables has been adjusted to reflect the 1-for-10 reverse stock split of the Company's common stock effective October 31, 2007.

This release contains forward-looking statements, which address a variety of subjects including, for example, expected revenue to be achieved in fiscal 2009, expected increase in demand for the Company's services, future sales growth, the further execution of the Company's strategic business plan and impact of that plan, prospects for growth, the strength of the Company's sales momentum and pipeline, the expected impact of strategic initiatives and financial performance, the expected benefits and impact of the Open Channel Solutions and PTS transactions and the expansion of capabilities expected to occur as a result of the transactions. All statements other than statements of historical fact, including without limitation, those with respect to the Company's goals, plans, expectations and strategies set forth herein are forward-looking statements. The following important factors and uncertainties, among others, could cause actual results to differ materially from those described in these forward-looking statements: the Company's success, including its ability to improve its cash position, expand its operations and revenue, lower its costs, improve its gross margins, sustain profitability, reach its long-term objectives and operate optimally, depends on its ability to execute on its business strategy and the continued and increased demand for and market acceptance of its services; global economic conditions, especially in the technology sector are uncertain and subject to volatility; demand for our clients' products may decline or may not achieve the levels anticipated by our clients; the Company's management may face strain on managerial and operational resources as they try to oversee the expanded operations; the Company may not be able to expand its operations in accordance with its business strategy; the Company's cash balances may not be sufficient to allow the Company to meet all of its business and investment goals; the Company may experience difficulties integrating technologies, operations and personnel in accordance with its business strategy; the Company derives a significant portion of its revenue from a small number of customers and the loss of any of those customers could significantly damage the Company's financial condition and results of operations; the Company frequently sells to its supply chain management clients on a purchase order basis rather than pursuant to contracts with minimum purchase requirements, and therefore its sales and the amount of projected revenue that is actually realized are subject to demand variability; risks inherent with conducting international operations; tax rate expectations

are based on current tax law and current expected income and may be affected by the jurisdictions in which profits are determined to be earned and taxed, changes in estimates of credits, benefits and deductions, the resolution of issues arising from tax audits with various tax authorities, including payment of interest and penalties and the ability to realize deferred tax assets; the mergers and acquisitions and IPO markets are inherently unpredictable and liquidity events for companies in the venture capital portfolio may not occur; and increased competition and technological changes in the markets in which the Company competes. The preliminary estimates included in this press release and accompanying tables are based on the Company's current estimate of the fourth quarter and full fiscal year financial results and the non-cash goodwill impairment charge associated with its European operations, and are subject to change upon the finalization of such impairment charge and the completion of the Company's financial audit for fiscal year 2008. For a detailed discussion of cautionary statements that may affect the Company's future results of operations and financial results, please refer to the Company's filings with the Securities and Exchange Commission, including the Company's most recent Annual Report on Form 10-K and Quarterly Report on Form 10-Q. Forward-looking statements represent management's current expectations and are inherently uncertain. We do not undertake any obligation to update forward-looking statements made by us.

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CMGI, Inc. and Subsidiaries
Condensed Consolidated Balance Sheets (Preliminary)
(In thousands)
(Unaudited)

| | July 31, 2008 | July 31, 2007 |
|--|-------------------|-------------------|
| Assets: | | |
| Cash and cash equivalents | \$ 160,585 | \$ 169,481 |
| Available-for-sale securities | 1,517 | 959 |
| Short-term investments | — | 111,850 |
| Trade accounts receivable, net | 213,096 | 185,574 |
| Inventories, net | 85,897 | 60,945 |
| Prepaid and other current assets | 12,820 | 11,659 |
| Current assets of discontinued operations | — | 91 |
| Total current assets | 473,915 | 540,559 |
| Property and equipment, net | 74,889 | 55,107 |
| Investments in affiliates | 34,558 | 30,460 |
| Goodwill | 192,012 | 178,276 |
| Intangible assets, net | 29,292 | 11,719 |
| Other assets | 7,894 | 3,007 |
| | <u>\$ 812,560</u> | <u>\$ 819,128</u> |
| Liabilities: | | |
| Current portion of capital lease obligations | \$ 349 | \$ 459 |
| Accounts payable | 168,190 | 151,233 |
| Current portion of accrued restructuring | 6,297 | 5,342 |
| Accrued income taxes | 1,027 | 7,288 |
| Accrued expenses | 52,817 | 50,710 |
| Other current liabilities | 3,653 | 2,539 |
| Current liabilities of discontinued operations | 2,840 | 2,782 |
| Total current liabilities | 235,173 | 220,353 |
| Revolving line of credit | — | 24,786 |
| Long-term portion of accrued restructuring | 3,871 | 5,136 |
| Long-term portion of capital leases obligations | 55 | 329 |
| Other long-term liabilities | 21,648 | 11,757 |
| Non-current liabilities of discontinued operations | 3,839 | 1,698 |
| | <u>29,413</u> | <u>43,706</u> |
| Stockholders' equity | 547,974 | 555,069 |
| | <u>\$ 812,560</u> | <u>\$ 819,128</u> |

CMGI, Inc. and Subsidiaries
Condensed Consolidated Statements of Operations (Preliminary)
(In thousands, except per share data)

(Unaudited)

| | Three months ended | | | Twelve months ended | | |
|--|--------------------|-------------------|---------------|---------------------|------------------|----------------|
| | 2008 | July 31, 2007 | Change | 2008 | July 31, 2007 | Change |
| Net revenue | \$ 276,292 | \$ 252,560 | 9.4% | \$ 1,068,207 | \$ 1,143,026 | (6.5%) |
| Cost of revenue | 247,572 | 222,038 | 11.5% | 930,629 | 1,011,961 | (8.0%) |
| Gross margin | 28,720 | 30,522 | (5.9%) | 137,578 | 131,065 | 5.0% |
| | 10.4% | 12.1% | (1.7%) | 12.9% | 11.5% | 1.4% |
| Operating expenses: | | | | | | |
| Selling, general and administrative | 28,597 | 29,291 | (2.4%) | 113,969 | 106,836 | 6.7% |
| Impairment of goodwill | 12,000 | — | 100.0% | 12,000 | — | 100.0% |
| Amortization of intangibles | 1,379 | 1,203 | 14.6% | 3,773 | 4,821 | (21.7%) |
| Restructuring, net | 2,123 | 2,462 | (13.8%) | 5,465 | 4,643 | 17.7% |
| Total operating expenses | 44,099 | 32,956 | 33.8% | 135,207 | 116,300 | 16.3% |
| Operating income (loss) | (15,379) | (2,434) | 531.8% | 2,371 | 14,765 | (83.9%) |
| Other income (loss) | (202) | (16) | 1162.5% | 23,333 | 41,505 | (43.8%) |
| Income (loss) from continuing operations before taxes | (15,581) | (2,450) | 536.0% | 25,704 | 56,270 | (54.3%) |
| Income tax expense | 3,033 | 3,757 | (19.3%) | 10,425 | 7,135 | 46.1% |
| Income (loss) from continuing operations | (18,614) | (6,207) | 199.9% | 15,279 | 49,135 | (68.9%) |
| Discontinued operations, net of income taxes: | | | | | | |
| Income (loss) from discontinued operations | (4,113) | 3 | — | (4,151) | 276 | (1604.0%) |
| Net Income (loss) | <u>\$ (22,727)</u> | <u>\$ (6,204)</u> | <u>266.3%</u> | <u>\$ 11,128</u> | <u>\$ 49,411</u> | <u>(77.5%)</u> |
| Basic and Diluted earnings (loss) per share: | | | | | | |
| Earnings (loss) from continuing operations | \$ (0.39) | \$ (0.13) | 200.0% | \$ 0.32 | \$ 1.00 | (68.0%) |
| Income (loss) from discontinued operations | \$ (0.09) | \$ 0.00 | (100.0%) | \$ (0.09) | \$ 0.01 | (1000.0%) |
| Net earnings (loss) | <u>\$ (0.48)</u> | <u>\$ (0.13)</u> | <u>269.2%</u> | <u>\$ 0.23</u> | <u>\$ 1.01</u> | <u>(77.2%)</u> |
| Shares used in computing basic earnings (loss) per share | 46,994 | 48,544 | (3.2%) | 47,747 | 48,455 | (1.5%) |
| Shares used in computing diluted earnings (loss) per share | <u>46,994</u> | <u>48,544</u> | <u>(3.2%)</u> | <u>47,901</u> | <u>48,833</u> | <u>(1.9%)</u> |

CMGI, Inc. and Subsidiaries
Condensed Consolidated Statements of Operations Information (Preliminary)
(In thousands)

(Unaudited)

| | <u>Three months ended</u> | | <u>Twelve months ended</u> | |
|--|---------------------------|--------------------------|----------------------------|--------------------------|
| | <u>July 31, 2008</u> | <u>July 31, 2007</u> | <u>July 31, 2008</u> | <u>July 31, 2007</u> |
| Net revenue: | | | | |
| Americas | \$ 96,005 | \$ 80,296 | \$ 348,817 | \$ 395,084 |
| Asia | 74,715 | 69,021 | 316,739 | 288,936 |
| Europe | 105,572 | 103,243 | 402,651 | 459,006 |
| | <u>\$276,292</u> | <u>\$252,560</u> | <u>\$1,068,207</u> | <u>\$1,143,026</u> |
| Operating income (loss): | | | | |
| Americas | \$ (5,619) | \$ (1,969) | \$ (1,078) | \$ 11,455 |
| Asia | 8,742 | 4,396 | 41,334 | 29,808 |
| Europe | (14,794) | (2,052) | (20,284) | (10,126) |
| | (11,671) | 375 | 19,972 | 31,137 |
| Other | (3,708) | (2,809) | (17,601) | (16,372) |
| | <u>\$ (15,379)</u> | <u>\$ (2,434)</u> | <u>\$ 2,371</u> | <u>\$ 14,765</u> |
| Non-GAAP operating income (loss): | | | | |
| Americas | \$ (852) | \$ 2,638 | \$ 12,314 | \$ 22,249 |
| Asia | 11,086 | 6,906 | 49,580 | 38,234 |
| Europe | (1,036) | (344) | (1,376) | (2,572) |
| | 9,198 | 9,200 | 60,518 | 57,911 |
| Other | (2,937) | (1,998) | (14,302) | (13,470) |
| | <u>\$ 6,261</u> | <u>\$ 7,202</u> | <u>\$ 46,216</u> | <u>\$ 44,441</u> |

Note: Non-GAAP operating income represents total operating income (loss), excluding net charges related to depreciation, goodwill impairment, amortization of intangible assets, stock-based compensation and restructuring.

TABLE RECONCILING NON-GAAP OPERATING INCOME TO GAAP OPERATING INCOME (LOSS) AND NET INCOME (LOSS)

| | | | | |
|--|--------------------|-------------------|--------------------|--------------------|
| NON-GAAP Operating income | \$ 6,261 | \$ 7,202 | \$ 46,216 | \$ 44,441 |
| Adjustments: | | | | |
| Depreciation | (4,906) | (4,576) | (17,008) | (15,028) |
| Impairment of goodwill | (12,000) | — | (12,000) | — |
| Amortization of intangible assets | (1,379) | (1,203) | (3,773) | (4,821) |
| Stock-based compensation | (1,232) | (1,395) | (5,599) | (5,184) |
| Restructuring, net | (2,123) | (2,462) | (5,465) | (4,643) |
| GAAP Operating income (loss) | <u>\$ (15,379)</u> | <u>\$ (2,434)</u> | <u>\$ 2,371</u> | <u>\$ 14,765</u> |
| Other income (loss), net | (202) | (16) | 23,333 | 41,505 |
| Income tax expense | 3,033 | 3,757 | 10,425 | 7,135 |
| Income (loss) from discontinued operations | (4,113) | 3 | (4,151) | 276 |
| Net income (loss) | <u>\$ (22,727)</u> | <u>\$ (6,204)</u> | <u>\$ 11,128</u> | <u>\$ 49,411</u> |
| Revenue (GAAP) | \$276,292 | \$252,560 | \$1,068,207 | \$1,143,026 |
| Less revenue from two previously announced discontinued programs | — | (12,322) | — | (137,888) |
| Adjusted Revenue | <u>\$276,292</u> | <u>\$240,238</u> | <u>\$1,068,207</u> | <u>\$1,005,138</u> |
| Fiscal 2008 vs. Fiscal 2007 | | | | |
| GAAP change in revenue | 9% | | (7%) | |
| Adjusted change in revenue | 15% | | 6% | |