

## PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

EPAS ID: PAT3123805

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	AMALGAMATION
<b>CONVEYING PARTY DATA</b>	
<b>Name</b>	<b>Execution Date</b>
KINAXIS HOLDINGS INC.	12/16/2013
<b>RECEIVING PARTY DATA</b>	
<b>Name:</b>	KINAXIS INC.
<b>Street Address:</b>	700 SILVER SEVEN ROAD
<b>City:</b>	OTTAWA
<b>State/Country:</b>	CANADA
<b>Postal Code:</b>	K2V 1C3
<b>PROPERTY NUMBERS Total: 2</b>	
<b>Property Type</b>	<b>Number</b>
<b>Patent Number:</b>	7610212
<b>Patent Number:</b>	8015044
<b>CORRESPONDENCE DATA</b>	
<b>Fax Number:</b>	(613)563-9231
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>	
<b>Phone:</b>	613 232 5300
<b>Email:</b>	atanguay@shapirocohen.com
<b>Correspondent Name:</b>	SHAPIRO COHEN
<b>Address Line 1:</b>	411 LEGGET DRIVE
<b>Address Line 4:</b>	OTTAWA, CANADA K2K 3C9
<b>ATTORNEY DOCKET NUMBER:</b>	09494P0008US04
<b>NAME OF SUBMITTER:</b>	ANN TANGUAY
<b>SIGNATURE:</b>	/atanguay/
<b>DATE SIGNED:</b>	11/26/2014
<b>Total Attachments: 19</b>	
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## Certificate of Amalgamation

*Canada Business Corporations Act*

## Certificat de fusion

*Loi canadienne sur les sociétés par actions*

KINAXIS INC.

Corporate name / Dénomination sociale

855354-8

Corporation number / Numéro de société

I HEREBY CERTIFY that the above-named corporation resulted from an amalgamation, under section 185 of the *Canada Business Corporations Act*, of the corporations set out in the attached articles of amalgamation.

JE CERTIFIE que la société susmentionnée est issue d'une fusion, en vertu de l'article 185 de la *Loi canadienne sur les sociétés par actions*, des sociétés dont les dénominations apparaissent dans les statuts de fusion ci-joints.

Marcie Girouard

Director / Directeur

2013-12-16

Date of Amalgamation (YYYY-MM-DD)  
Date de fusion (AAAA-MM-JJ)

Canada



Industry  
Canada

Industrie  
Canada

**Canada Business Corporations Act (CBCA)**  
**FORM 9**  
**ARTICLES OF AMALGAMATION**  
**(Section 185)**

<b>1 - Corporate name of the amalgamated corporation</b> KINAXIS INC.		
<b>2 - The province or territory in Canada where the registered office is situated (do not indicate the full address)</b> Ontario		
<b>3 - The classes and any maximum number of shares that the corporation is authorized to issue</b> The annexed Schedule 1 is incorporated in this form.		
<b>4 - Restrictions, if any, on share transfers</b> The annexed Schedule 2 is incorporated in this form.		
<b>5 - Minimum and maximum number of directors (for a fixed number of directors, please indicate the same number in both boxes)</b> Minimum number <input type="text" value="3"/> Maximum number <input type="text" value="10"/>		
<b>6 - Restrictions, if any, on the business the corporation may carry on</b> None.		
<b>7 - Other provisions, if any</b> The annexed Schedule 3 is incorporated in this form.		
<b>8 - The amalgamation has been approved pursuant to that section or subsection of the Act which is indicated as follows:</b>		
<input checked="" type="radio"/> 183 - Long form : approved by special resolution of shareholders	<input checked="" type="radio"/> 184(1) - Vertical short-form : approved by resolution of directors	<input type="radio"/> 184(2) - Horizontal short-form : approved by resolution of directors
<b>9 - Declaration</b> I hereby certify that I am a director or an authorized officer of the following corporation:		
Name of the amalgamating corporations	Corporation number	Signature
Kinaxis Inc.	8258350	
Kinaxis Holdings Inc.	855353-0	
Note: Misrepresentation constitutes an offence and, on summary conviction, a person is liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or to both (subsection 250(1) of the CBCA).		

2013-12-16

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Canada

## SCHEDULE 1

The Corporation is authorized to issue an unlimited number of Common Shares, an unlimited number of Non-Voting Common Shares and 10,000,000 Class A Preferred Shares.

The term "Continuance Date" means July 24, 2012. Subject to the requirements of the *Canada Business Corporations Act* as now enacted or as the same may from time to time be amended, re-enacted or replaced (the "Act"), the rights, privileges, restrictions and conditions attaching to the Common Shares, Non-Voting Common Shares and Class A Preferred Shares are as follows:

### 1. Liquidation Rights

1.1 Liquidation Payments. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, the holders of Class A Preferred Shares shall be entitled to be paid, before any distribution or other payment shall be made to the holders of any of the Common Shares or any other class of shares ranking junior to the Class A Preferred Shares, out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock of all classes an amount equal to the greater of:

- (a) The sum of (i) U.S. \$3.89 per Class A Preferred Share (the "Minimum Purchase Price"), such amount to be proportionately adjusted for stock splits, stock dividends, stock combinations, stock recapitalizations and similar events occurring after the Continuance Date plus all accrued but unpaid dividends; plus (ii) any additional amount payable per Class A Preferred Share after such payments referred to in clause 1.1(a)(i) have been made in full to the holders of the Class A Preferred Shares (or funds necessary for such payments shall have been set aside by the Corporation in trust for the account of holders of Class A Preferred Shares so as to be available for such payments), as if the remaining assets available for distribution were distributed among the holders of the Class A Preferred Shares (on an as converted to Common Share basis) and Common Shares rateably in proportion to the number of Common Shares held by each of them, but only to the extent that the amount payable under this clause 1.1(a)(ii), together with the amount payable pursuant to clause 1.1(a)(i), does not exceed U.S. \$9.72 per Class A Preferred Share, such amount to be proportionately adjusted for stock splits, stock dividends, stock combinations, stock recapitalizations and similar events occurring after the Continuance Date; and
- (b) an amount equal to the amount per Class A Preferred Share that would have been payable had all Class A Preferred Shares been converted to Common Shares pursuant to the provisions of Section 2 immediately prior to such liquidation, dissolution or winding up.

If all assets of the Corporation shall be insufficient to permit the payment in full to the holders of Class A Preferred Shares of the amount referred to in clause 1.1(a)(i), then the entire assets of the Corporation available for such distribution shall be distributed rateably among the holders of Class A Preferred Shares in proportion to the full preferential amount each such holder is otherwise entitled to receive.

After conversion of Class A Preferred Shares into Common Shares pursuant to Section 2, the holder of such Common Shares shall not be entitled to any preferential payment or distribution in case of any liquidation, dissolution or winding up, but shall share rateably in any distribution of the assets of the Corporation among the holders of Common Shares.

The amounts payable with respect to Class A Preferred Shares under this Subsection 1.1 are hereinafter referred to as "Class A Preferred Share Liquidation Payments".

1.2 Distribution Other than Cash. Whenever the distributions provided for in this Section 1 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such property as

determined in good faith by the Board of Directors of the Corporation, and approved by holders holding at least 70% of the Class A Preferred Shares then outstanding or a nominee representative elected or appointed by holders of at least such number of Class A Preferred Shares (a "Class A Nominee") failing which, the fair market value of such property shall be determined by an independent appraiser selected by the Board of Directors and approved by holders holding at least 70% of the Class A Preferred Shares then outstanding or a Class A Nominee.

1.3 Sale, Merger as Liquidation, Etc. The sale, license or lease of all or substantially all of the Corporation's shares or assets or any merger, amalgamation or other consolidation of the Corporation with another corporation (other than a sale, merger, amalgamation or other consolidation where the consideration payable and paid to the holders of Class A Preferred Shares is equal to or greater than the consideration referred to in Section 4.2) shall be deemed to be a liquidation, dissolution or winding up of the affairs of the Corporation for purposes of this Section 1, unless the holders of at least 66⅔% of the Class A Preferred Shares then outstanding elect to the contrary, such election to be made by giving written notice thereof to the Corporation within 15 days after the Corporation provides written notice of such event to the holders of Class A Preferred Shares. If the holders of Class A Preferred Shares so elect and give such notice, the provisions of Subsection 2.7 shall apply to the Class A Preferred Shares. Unless such election is made, all consideration received by the Corporation in such transaction less all costs and expenses related to such transaction and any debt required to be paid as a result of such transaction together with all other available assets of the Corporation shall be distributed toward the amounts payable with respect to such Class A Preferred Shares pursuant to Subsection 1.1.

1.4 Notice. Written notice of any proposed liquidation, dissolution or winding up of the affairs of the Corporation (including any sale of assets which may be deemed to be a liquidation, dissolution or winding up of the affairs of the Corporation under Subsection 1.3), stating an estimated payment date, the estimated amount of the Class A Preferred Share Liquidation Payments and the place where such Class A Preferred Share Liquidation Payments shall be payable, shall be delivered to the holders of Class A Preferred Shares not less than 45 days prior to the proposed date of such proposed liquidation, dissolution or winding up.

## 2. Conversion

The holders of Class A Preferred Shares shall have conversion rights as follows (the "Conversion Rights"):

2.1 Optional Conversion. Each Class A Preferred Share shall be convertible, without the payment of any additional consideration by the holder thereof and at the option of the holder thereof at any time after the Continuance Date at the office of the Corporation or any transfer agent for the Class A Preferred Shares, into such number of validly issued, fully paid and non-assessable Common Shares as is determined by multiplying each such share by the ratio determined by dividing U.S. \$3.89 by the Conversion Price, determined and adjusted as hereinafter provided, in effect at the time of conversion. The Conversion Price at which Common Shares will be deliverable upon conversion of Class A Preferred Shares without the payment of any additional consideration by the holder thereof (the "Conversion Price") shall initially be U.S. \$3.89 per Common Share.

2.2 Mechanics of Optional Conversions. Before any holder of Class A Preferred Shares shall be entitled to convert the same into Common Shares, the holder shall surrender the certificate or certificates therefor at the office of the Corporation or of any transfer agent for Class A Preferred Shares, and shall give written notice to the Corporation at such office that the holder elects to convert the same and shall state therein the number of Class A Preferred Shares being converted, the holder's name or the name or, subject to any legal or contractual restrictions on transfer thereof, names of the holder's nominees in which the holder wishes the certificate or certificates for Common Shares to be issued. Such notice shall be accompanied by an agreement in form reasonably satisfactory to the Corporation by which the person(s) in whose name the Common Shares are to be

issued agrees to be bound by the provisions of any applicable shareholders' agreement of the Corporation if such person is not already a party to such agreements. On the date of conversion, all rights with respect to the Class A Preferred Shares so converted shall terminate, except for any of the rights of the holder thereof, upon surrender of the holder's certificate or certificates therefor, to receive certificates for the number of Common Shares into which such Class A Preferred Shares have been converted, and any declared and unpaid dividends on such Class A Preferred Shares but only to the extent that the Corporation has actually declared, but not paid, such dividends prior to such date. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by the holder's attorney duly authorized in writing. The Corporation shall, as soon as practicable after surrender of the certificate or certificates for conversion, issue and deliver to such holder of Class A Preferred Shares, or, subject to any legal or contractual restrictions on transfer thereof, to the holder's nominee or nominees, a certificate or certificates for the number of Common Shares to which the holder shall be entitled as aforesaid and shall promptly pay in cash, if it has not already done so, any declared and unpaid dividends on the Class A Preferred Shares being converted, but only to the extent that the Corporation has actually declared, but not paid, such dividends prior to such date. Such conversion shall be deemed, to have been made immediately prior to the close of business on the date of such surrender of Class A Preferred Shares to be converted, and the person or persons entitled to receive the Common Shares issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Shares on such date.

2.3 Automatic Conversion. Each Class A Preferred Share shall, in connection with the Common Shares being listed on (i) a national securities exchange, as defined in the *Securities Exchange Act of 1934*, (ii) a senior stock exchange in Canada or (iii) Nasdaq, be converted automatically into Common Shares at the then effective Conversion Price in accordance with the provisions of this Section 2, immediately upon the first to occur of:

- (a) the closing of an offering or offerings pursuant to an effective registration statement under the *US Securities Act of 1933* or a receipted final prospectus under the *Securities Act (Ontario)*, as amended, or similar document filed under other applicable securities laws in Canada or the United States in which the proceeds to the Corporation from such offering or offerings is not less than U.S. \$30,000,000 in the aggregate and the public offering price in such offering or offerings is not less than U.S. \$11.66 per share, adjusted to take account of any dividend, combination of shares, or the like or any other adjustment to the Conversion Price pursuant to Section 2; or
- (b) the receipt by the Corporation of the affirmative vote or written consent of (i) at least three holders of Class A Preferred Shares (none of which may be an affiliate (as such term is defined in the Act) of the other(s)) collectively holding more than 50% of the then outstanding Class A Preferred Shares, or (ii) if the Corporation then has fewer than three such holders of Class A Preferred Shares, all of the holders of Class A Preferred Shares. Such affirmative vote or written consent may designate an effective time and/or conditions for such conversion, and in such case, the conversion shall only be effective at such designated effective time and/or subject to the fulfilment of such conditions, as applicable.

2.4 Mechanics of Automatic Conversions. Upon the occurrence of an event specified in Subsection 2.3, the Class A Preferred Shares shall be converted automatically without any further action by the holders of the Class A Preferred Shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that all holders of Class A Preferred Shares being converted shall be given written notice of the occurrence of the conversion prescribed by Subsection 2.3, including the date such conversion occurred (the "Automatic Conversion Date"), and the Corporation shall not be obligated to issue certificates evidencing the Common Shares issuable upon such conversion unless certificates evidencing such

Class A Preferred Shares being converted are either delivered to the Corporation or its transfer agent or the holder notifies the Corporation or any transfer agent that such certificates have been lost, stolen, or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith and, if the Corporation so elects, provides an appropriate and reasonable indemnity bond and the holder of the Common Shares enters into an agreement in form reasonably satisfactory to the Corporation by which the person in whose name the Common Shares are to be issued agrees to be bound by the provisions of any applicable shareholders' agreement of the Corporation if such person is not already a party. On the Automatic Conversion Date, all rights with respect to the Class A Preferred Shares so converted shall terminate, except for any of the rights of the holder thereof, upon surrender of the holder's certificate or certificates therefor, to receive certificates for the number of Common Shares into which such Class A Preferred Shares have been converted, and receive any declared and unpaid dividends on such Class A Preferred Shares, but only to the extent that the Corporation has actually declared, but not paid, such dividends prior to such date. Upon the automatic conversion of the Class A Preferred Shares, the holders of such Class A Preferred Shares shall surrender the certificates representing such shares at the office of the Corporation or of its transfer agent. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by the holder's attorney duly authorized in writing. Upon surrender of such certificates, the Corporation shall promptly issue and deliver to such holder, in such holder's name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of Common Shares into which the Class A Preferred Shares have been converted, and shall promptly pay in cash, if it has not already done so, any declared and unpaid dividends on the Class A Preferred Shares being converted but only to the extent that the Corporation has actually declared, but not paid, such dividends prior to such date. Such conversion shall be deemed to have been made immediately prior to the close of business on Automatic Conversion Date, and the person or persons entitled to receive the Common Shares issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Shares on such date.

**2.5 Adjustments to Conversion Price.**

(a) **Special Definitions.** For purposes of this Subsection 2.5, the following definitions shall apply:

"**Additional Common Shares**" shall mean all Common Shares issued (or, pursuant to Subsection 2.5(b), deemed to be issued) by the Corporation after the Continuance Date, other than:

- (i) Common Shares issued or issuable upon conversion of Class A Preferred Shares;
- (ii) shares representing not more than the percentage of the number of shares (for shares other than Common Shares, on an as converted to Common Share basis) then issued and outstanding as approved by the Board including any and all nominees approved by any holder of Class A Preferred Shares (or as otherwise approved by the holders of Class A Preferred Shares in accordance with Section 3.1(j)) issued or issuable to officers, directors or employees of, or consultants to, the Corporation pursuant to a stock purchase or option plan or other similar arrangement approved by the Board of Directors;
- (iii) Common Shares issued in an initial public offering in which the Class A Preferred Shares are converted pursuant to Subsection 2.3; and
- (iv) Common Shares issued in connection with the acquisition of a business or shares of another company at fair market value.



"Convertible Securities" shall mean any evidences of indebtedness, shares of capital stock (other than Common Shares) or other securities directly or indirectly convertible into or exchangeable for Common Shares, other than the Class A Preferred Shares.

"Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Shares or Convertible Securities, other than options or rights to purchase shares referred to in clause (ii) of the definition of "Additional Common Shares" in Section 2.5(a).

(b) Issue of Securities Deemed to be Issue of Additional Common Shares.

(i) Options and Convertible Securities. In the event the Corporation at any time or from time to time after the Continuance Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of Common Shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Common Shares issued as of the time of issue of such Option or Convertible Securities for Consideration determined in accordance with Subsection 2.5(d)(iii) or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Common Shares are deemed to be issued:

- A. except as provided in Subsection 2.5(b)(i)(B) below, no further adjustment of the Conversion Price shall be made upon the subsequent issue of Convertible Securities or Common Shares upon the exercise of such Options or conversion or exchange of such Convertible Securities;
- B. If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the Consideration (as defined in Subsection 2.5(d)) payable to the Corporation, or decrease in the number of Common Shares issuable, upon the exercise, conversion or exchange thereof, the Conversion Price, computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;
- C. upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date, with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:
  - (1) in the case of the Convertible Securities or Options for Common Shares, the only Additional Common Shares issued were the Common Shares, if

any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the Consideration received therefor was the Consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the Consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional Consideration, if any, actually received by the Corporation upon such conversion or exchange; and

- (2) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the Consideration received by the Corporation for the Additional Common Shares deemed to have been then issued was the Consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the Consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

D. no readjustment pursuant to Clause (B) or (C) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any issue of Additional Common Shares between the original adjustment date and such adjustment date;

E. in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in clause (C) above; and

F. if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Subsection 2.5(b) as of the actual date of their issue.

- (c) Adjustment of the Conversion Price Upon Issue of Additional Common Shares. In the event that at any time or from time to time after the Continuance Date, the Corporation shall issue Additional Common Shares (including, without limitation, Additional Common Shares deemed to be issued pursuant to Subsection 2.5(b)(i), but excluding Additional Common Shares deemed to be issued pursuant to Subsection 2.5(b)(ii), which event is addressed in Subsection 2.5(e)(i)), without consideration or for a Consideration Per Share (as defined in Section 2.5(d)(ii) below) less than the Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the Conversion Price in effect at the time of the issue or deemed issue by: a fraction, the numerator of which shall be (x) the number of Common

Shares deemed to be outstanding (as defined below) immediately prior to such issue or deemed issue plus the number of Common Shares that the aggregate Consideration received by the Corporation for the total number of Additional Common Shares issued, or deemed to be issued, would purchase if the purchase price for each Common Share was the Conversion Price in effect immediately prior to such issuance or deemed issuance and the denominator of which shall be (y) the number of Common Shares deemed to be outstanding (as defined below) immediately prior to such issue or deemed issue plus the number of Additional Common Shares issued or deemed to be issued. For the purposes of the above calculation, the number of Common Shares deemed to be outstanding immediately prior to such issue or deemed issue shall be calculated on a fully diluted basis and, as of any given date, shall be the sum of (A) the number of Common Shares actually outstanding as of such date, (B) the number of Common Shares into which the then outstanding Class A Preferred Shares could be converted if fully converted immediately prior to the issue or deemed issue of the Additional Common Shares, and (C) the number of Common Shares issuable upon the exercise or conversion of all Convertible Securities or other rights, options and convertible securities of the Corporation outstanding immediately prior to the issue or deemed issue of the Additional Common Shares, but not including in such calculation any Additional Common Shares issuable with respect to Class A Preferred Shares solely as a result of the adjustment of the Conversion Price resulting from the issuance of Additional Common Shares causing the adjustment in question.

- (d) Determination of Consideration. For purposes of this Subsection 2.5, the consideration (the "Consideration") received or receivable by the Corporation for the issue or deemed issue of any Additional Common Shares shall be computed as follows:
- (i) Cash and Property. Such Consideration shall:
- A. insofar as it consists of cash, be computed at the aggregate amounts of cash received or receivable by the Corporation for such Additional Common Shares;
  - B. insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue or deemed issue, as determined in good faith by the Board of Directors, and approved by holders holding at least 70% of the Class A Preferred Shares then outstanding or a Class A Nominee failing which, the fair market value of such property shall be determined by an independent appraiser selected by the Board of Directors and approved by holders holding at least 70% of the Class A Preferred Shares then outstanding or a Class A Nominee; and
  - C. in the event Additional Common Shares are issued or deemed to be issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received or receivable, computed as provided in Subsections 2.5(d)(i)(A) and (B) above, allocable to such Additional Common Shares as determined in good faith by the Board of Directors.
- (ii) Additional Common Shares other than Options and Convertible Securities. The Consideration per share (the "Consideration Per Share") for the issue or deemed issued of any Additional Common Shares, other than Options and Convertible Securities, shall be the Consideration for the issue of such Additional Common Shares, divided by the total

number of such Additional Common Shares issued by the Corporation in exchange therefor.

- (iii) Options and Convertible Securities. The Consideration per share (also the "Consideration Per Share", as the context requires) for Additional Common Shares deemed to have been issued pursuant to Subsection 2.5(b)(i) relating to Options and Convertible Securities, shall be computed by dividing (x) the Consideration for the issue of such Options or Convertible Securities, plus the aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such Consideration), payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by (y) the maximum number of Common Shares (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) Adjustment of the Conversion Price for Dividends, Distributions, Subdivisions, Stock Splits or Combinations of Common Shares.

- (i) Adjustments for Common Share Dividends and Distributions. If the Corporation at any time or from time to time after the Continuance Date makes, or fixes a record date for the determination of holders of Common Shares entitled to receive, a dividend or other distribution payable in Additional Common Shares, in each such event, the Conversion Price that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed; as of the close of business on such record date, by multiplying such Conversion Price then in effect by a fraction (i) the numerator of which is the total number of Common Shares issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which is the total number of Common Shares issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of Common Shares issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, such Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this Subsection 2.5(e)(i) to reflect the actual payment of such dividend or distribution.
- (ii) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Continuance Date effect a subdivision of the outstanding Common Shares without a corresponding subdivision of the Class A Preferred Shares, each Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Corporation shall at any time or from time to time after the Continuance Date combine the outstanding Common Shares into a smaller number of shares without a corresponding combination of the Class A Preferred Shares, the Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Subsection 2.5(e)(ii) shall become

effective at the close of business on the date the subdivision or combination becomes effective.

- (iii) Adjustments for Other Dividends and Distributions. If the Corporation at any time or from time to time after the Continuance Date makes, or fixes a record date for the determination of holders of Common Shares entitled to receive, a dividend or other distribution payable in securities of the Corporation other than Additional Common Shares, in each such event, provision shall be made so that the holders of the Class A Preferred Shares shall receive upon conversion thereof, in addition to the number of Common Shares receivable thereupon, the amount of other securities of the Corporation which they would have received had their Class A Preferred Shares been converted into Common Shares on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 2.5 with respect to the rights of the holders of the Class A Preferred Shares or with respect to such other securities by their terms.

2.6 Adjustment for Reclassification, Exchange or Substitution. In the event that at any time or from time to time after the Continuance Date, the Common Shares issuable upon the conversion of Class A Preferred Shares shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a merger, consolidation, or sale of assets provided for in Subsection 2.7 below), then and in each such event the holder of any Class A Preferred Shares shall have the right thereafter to convert such shares into the kind and amount of shares and other securities and property receivable upon such reorganization, reclassification, or other change, by the holders of the maximum number of Common Shares into which such Class A Preferred Shares might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

2.7 Adjustment for Merger, Consolidation or Sale of Assets. In the event that at any time or from time to time after the Continuance Date, the Corporation shall sell all or substantially all of its assets or merge, amalgamate or consolidate with or into another entity and such transaction is not treated as a liquidation under Subsection 1.3, as part of such sale or reorganization, provision shall be made so that the holders of the Class A Preferred Shares then outstanding shall thereafter be entitled to receive upon conversion of the Class A Preferred Shares the kind and amount of shares or other securities or property to which a holder of a number of Common Shares equal to the number of Common Shares deliverable upon conversion of such Class A Preferred Shares would have been entitled to receive upon such consolidation, amalgamation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions set forth in this Section 2 with respect to the rights and interests thereafter of the holders of Class A Preferred Shares, to the end that the provisions set forth in this Section 2 (including adjustment of the Conversion Price) shall thereafter be applicable, as nearly equivalent as reasonably may be, in relation to any shares or other securities or other property thereafter deliverable upon the conversion of Class A Preferred Shares.

2.8 No Impairment. The Corporation shall not, by amendment of its Articles or through any reorganization, transfer of assets, consolidation, amalgamation, merger, dissolution, issue or sale of securities or any other voluntary action, including, without limitation, voluntary bankruptcy proceedings, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but shall at all times in good faith assist in the carrying out of all the provisions of this Section 2 and in the taking of all

such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Class A Preferred Shares under this Section 2 against impairment.

2.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment pursuant to this Section 2, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Class A Preferred Shares at the holder's address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of:

- (a) the Consideration received or deemed to be received by the Corporation for any Additional Common Shares issued or sold or deemed to have been issued or sold;
- (b) the number of Additional Common Shares;
- (c) the number of Common Shares and the amount, if any, of other property which at the time would be received upon the conversion of each Class A Preferred Share;
- (d) any amendment to the Articles of the Corporation that may adversely affect the rights of the holders of the Class A Preferred Shares; and
- (e) the Conversion Price at the time in effect.

The holders of at least 66% of the outstanding Class A Preferred Shares shall have the right to challenge any determination by the Board of Directors of fair value pursuant to this Section 2, in which case such determination of fair value shall be made by an independent appraiser selected jointly by the Board of Directors and the challenging parties, the cost of such appraisal to be borne equally by the Corporation and the challenging parties.

2.10 Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend which is the same as cash dividends paid in previous quarters) or other distribution, the Corporation shall deliver to each holder of Class A Preferred Shares at least twenty days prior to such record date a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution.

2.11 Common Shares Reserved. The Corporation shall reserve and keep available out of its authorized, but unissued Common Shares such number of Common Shares as shall from time to time be sufficient to effect conversion of the Class A Preferred Shares.

2.12 Fractional Shares. No fractional Common Shares shall be issued upon conversion of Class A Preferred Shares. All Common Shares (including fractions thereof) issuable upon conversion of more than one Class A Preferred Share by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Shares' Conversion Price on the date of conversion.

3. Restrictions.

3.1 At any time when Class A Preferred Shares are outstanding and, in respect of Subsections 3.1(e), 3.1(f), 3.1(g), 3.1(h) and 3.1(i), only when the number of Class A Preferred Shares represents greater than 10% of the issued and outstanding shares in the capital of the Corporation, except where the vote of the holders of a greater number of shares of the Corporation is required by law or hereunder, and in addition to any other vote required by law or hereunder, without the affirmative vote of: (i) at least three holders of Class A Preferred Shares (none of which may be an affiliate (as such term is defined in the Act) of the other(s)) collectively holding more than 50% of the then outstanding Class A Preferred Shares, voting as a single class, or (ii) if the Corporation then has fewer than three such holders of Class A Preferred Shares, all of the holders of Class A Preferred Shares, or in either case the written consent by such holders, the Corporation will not:

- (a) amend or change any of the rights, privileges, restrictions and conditions of the Class A Preferred Shares;
- (b) create or authorize the creation or issuance of, or increase or authorize any increase in the number of authorized shares of any class or series of capital stock of the Corporation having liquidation or dividend rights equal or superior to the Class A Preferred Shares;
- (c) issue any shares, or any rights, options or warrants to acquire shares or any security convertible into shares, or take any action that reclassifies any outstanding shares of any class or series of capital stock of the Corporation having liquidation or dividend rights or preferences equal or superior to the Class A Preferred Shares;
- (d) sell, lease, exchange, convey or otherwise dispose of all or substantially all of its assets;
- (e) merge, amalgamate or otherwise allow any other consolidation of the Corporation with any other corporation, if (i) at least a majority of the votes attached to shares of the resulting corporation would not be owned by persons owning shares in the capital of the Corporation immediately prior to such merger, amalgamation or consolidation; and (ii) the consideration payable in respect of each Class A Preferred Share is less than that set forth in Section 4.2 hereof;
- (f) pay any dividends on any class or series of shares in its share capital other than the Class A Preferred Shares;
- (g) redeem or repurchase any shares in its share capital other than pursuant to Section 6 or in accordance with the shareholders' agreement among the Corporation and certain shareholders of the Corporation dated April 11, 2000 (as the same may be amended from time to time) or the employee stock option plan or employee stock purchase plan authorized thereunder;
- (h) amend its articles;
- (i) increase the number of members constituting the Board of Directors; or
- (j) increase the percentage of outstanding shares that may be reserved for issuance from treasury to employees pursuant to the exercise by employees of options to, be granted by the Corporation in future under the employee stock option plan or the purchase by employees under the employee stock purchase plan to an amount in excess of the percentage first approved under Subsection 2.5(a)(ii).

4. Voting Rights.

4.1 The holders of Class A Preferred Shares shall be entitled to notice of any meeting of shareholders and, except with respect to the matters set forth in Section 3 or as otherwise required by law, shall vote together with the holders of Common Shares as a single class upon any matter submitted to the shareholders for a vote, on the following basis:

- (a) holders of Common Shares shall have one vote per share; and
- (b) holders of Class A Preferred Shares shall have that number of votes per share as is equal to the number of Common Shares (including fractions of a share) into which each such Class A Preferred Share held by such holder could be converted on the date for determination of shareholders entitled to vote at the meeting or on the date of any written consent.

4.2 The holders of Class A Preferred Shares shall not be entitled to vote as a separate class pursuant to Sections 176(1)(a), (b) or (e) or Section 183(4) of the Act in respect of a bona fide offer in writing from any person to purchase all of the issued and outstanding securities of the Corporation by way of an amalgamation, merger, arrangement or reorganization whereby the consideration to be received by the holders of Common Shares and Class A Preferred Shares (on an as converted to and per Common Share basis) is:

- (a) cash, representing a price of not less than U.S. \$11.66 (or Canadian dollar equivalent) per Common Share and Class A Preferred Share (on an as converted to Common Share basis), adjusted to take account of any stock dividend, subdivision or consolidation of shares or the like occurring after the Continuance Date; or
- (b) securities which are listed and posted for trading on a national securities exchange as defined in the United States of America *Securities Exchange Act of 1934*, a senior stock exchange in Canada or Nasdaq National Market, and are freely tradeable ("Freely-Tradeable Shares") which, based on the average closing market price per Freely-Tradeable Share on the ten trading days immediately preceding the date of the notice of such bona fide offer, represents consideration of not less than U.S. \$11.66 (or Canadian dollar equivalent) per Common Share and Class A Preferred Share (on an as converted to Common Share basis), adjusted to take account of any stock dividend, subdivision or consolidation of shares or the like occurring after the Continuance Date or any other adjustment of the Conversion Price pursuant to Section 2, or securities which are convertible or exchangeable at any time at the unconditional option of the holder thereof into such Freely-Tradeable Shares without any additional compensation; or
- (c) any combination of (a) and (b) above, where the aggregate consideration referred to in (a) and (b) above has a value of not less than U.S. \$11.66 (or Canadian dollar equivalent) per Common Share and Class A Preferred Share (each on an as converted to Common Share basis), adjusted to take account of any stock dividend, subdivision or consolidation of shares or the like, or any other adjustment of the Conversion Price pursuant to Section 2 occurring after the Continuance Date;

provided that:

- (d) the liability of each holder of Class A Preferred Shares under the offer is several, and not joint and several; and



- (e) the liability of any holder of Class A Preferred Shares under the applicable offer does not exceed that portion of the consideration received by such holder of Class A Preferred Shares.

5. Dividends.

5.1 The holders of outstanding Class A Preferred Shares shall be entitled to receive dividends but only when and as declared by the Board of Directors.

5.2 The Corporation shall not declare or pay any distribution on Common Shares until the holders of outstanding Class A Preferred Shares shall have first received, or simultaneously received out of the funds legally available therefor, a distribution on each outstanding Class A Preferred Share in an amount at least equal to the sum of the product of (i) the per share amount, if any, of the dividends or other distributions to be declared, paid or set aside for the Common Shares, multiplied by, (ii) the number of Common Shares into which a Class A Preferred Share is then convertible.

5.3 Subject to Subsections 5.1 and 5.2, dividends may be declared and paid on Common Shares from funds lawfully available therefor as and when determined by the Board of Directors of the Corporation.

6. Optional Redemption.

6.1 For purposes of this Section 6, the term "Original Issue Date" shall mean the first date on which a Class A Preferred Share was issued. From and after the date which is:

- (a) one day after the fifth anniversary of the Original Issue Date, upon the request by holders of at least 70% of the Class A Preferred Shares given in accordance with this Subsection 6.1, the Corporation shall redeem from each holder of Class A Preferred Shares, whether or not such holder has so requested, to the extent the Corporation has funds legally available for such purpose, and subject to Subsection 6.4, up to 33.4% of the Class A Preferred Shares then held by such holder,
- (b) the sixth anniversary of the Original Issue Date, upon the request by holders of at least 70% of the Class A Preferred Shares given in accordance with this Subsection 6.1, the Corporation shall redeem from each holder of Class A Preferred Shares, whether or not such holder has so requested, to the extent the Corporation has funds legally available for such purpose, and subject to Subsection 6.4, up to 50% of the Class A Preferred Shares then held by such holder,
- (c) the seventh anniversary of the Original Issue Date, upon the request by holders of at least 70% of the Class A Preferred Shares given in accordance with this Subsection 6.1, the Corporation shall redeem from each holder of Class A Preferred Shares, whether or not such holder has so requested, to the extent the Corporation has funds legally available for such purpose, and subject to Subsection 6.4, up to 100% of the Class A Preferred Shares then held by such holder.

Any election above may be made only by delivering to the Corporation (a) a written notice or notices signed by the holders of at least 70% of the then outstanding Class A Preferred Shares not more than ninety (90) days and not less than thirty (30) days prior to any applicable redemption date, and (b) on or before the date which is three business days prior to the applicable redemption date, certificates for the Class A Preferred Shares so to be redeemed, together with stock powers therefor duly executed by such holder in blank (such written election, certificates and stock powers being referred to collectively as a "Redemption Notice"). The Corporation shall, at least ninety (90) days prior to each of the foregoing

redemption dates, deliver to each registered holder of Class A Preferred Shares, written notice of such upcoming redemption date.

6.2 Subject to Subsection 6.3, within 10 days of receipt of a Redemption Notice, the Corporation shall deliver to each holder of Class A Preferred Shares a notice containing a copy of each Redemption Notice it has received, and specifying the total funds legally available to the Corporation for redemption of the Class A Preferred Shares outstanding at such time which are then subject to redemption in accordance with this Section 6.

6.3 Within 30 days of the delivery to the Corporation of the Redemption Notice referred to in Subsection 6.1, the Corporation shall redeem from each holder of Class A Preferred Shares the applicable percentage of Class A Preferred Shares as set forth in Section 6.1 to the extent the Corporation has funds legally available for such purpose, and subject to Subsection 6.4, by paying to each holder an amount per Class A Preferred Share equal to the number of Class A Preferred Shares held by the holder multiplied by the greater of (i) the Minimum Purchase Price, as adjusted, plus all accrued and unpaid dividends; and (ii) the fair market value per Class A Preferred Share, as determined by an independent appraiser selected by the Board of Directors and approved by holders holding at least 70% of the Class A Preferred Shares then outstanding or a Class A Nominee. For the purposes of the foregoing, fair market value shall mean the highest price per share for which Class A Preferred Shares could be sold to an independent third party, assuming a reasonable time for sale and no discount for minority position.

6.4 If the funds of the Corporation legally available for redemption of Class A Preferred Shares are insufficient to redeem the total number of Class A Preferred Shares, those funds which are legally available will be used to redeem the maximum possible number of whole shares rateably among the holders of such shares. The Class A Preferred Shares not redeemed shall remain outstanding and, notwithstanding anything herein to the contrary, shall remain entitled to all rights and preferences otherwise provided herein. As and when funds legally available for redemption of Class A Preferred Shares become available, those funds will be used to redeem the maximum possible number of whole shares rateably among the holders of such shares.

## **7. Notices.**

7.1 All notices, requests, consents, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given, made and received (a) when delivered against receipt; (b) upon transmitter's confirmation of the receipt of a facsimile transmission; which shall be followed by an original sent otherwise in accordance with this Section 7; (c) upon confirmed delivery by a standard overnight carrier; or (d) upon expiration of 5 business days after the date when deposited in the mail, first class postage prepaid, addressed to the Corporation at its registered office or at such other address of which the Corporation may notify the holders of Class A Preferred Shares from time to time, or if to a holder of Class A Preferred Shares or Common Shares, to such holder's address as shown by the records of the Corporation.

## **8. Non-Voting Common Shares.**

8.1 **Payment of Dividends:** The holders of the Non-Voting Common Shares shall, subject to the rights of the holders of the Class A Preferred Shares, the Common Shares and any other class of shares of the Corporation entitled to dividends in priority to or rateably with the holders of the Non-Voting Common Shares, be entitled to receive dividends if, as and when declared by the board of directors of the Corporation out of the assets of the Corporation properly applicable to the payment of dividends rateably with the holders of the Common Shares in such amounts and payable in such manner as the board of directors may from time to time determine.

8.2 **Participation upon Liquidation, Dissolution or Winding-Up:** In the event of the liquidation, dissolution or winding-up of the Corporation or other distribution of assets of the Corporation among its shareholders for the

purpose of winding-up its affairs, the holders of the Non-Voting Common Shares shall, subject to the rights of the holders of any other class of shares of the Corporation entitled to receive the assets of the Corporation upon such a distribution in priority to or rateably with the holders of the Non-Voting Common Shares and rateably with the holders of the Common Shares, be entitled to participate in any distribution of the remaining property of the Corporation.

**8.3 Voting Rights:** The holders of the Non-Voting Common Shares shall be entitled to receive notice of and to attend any meeting of the shareholders of the Corporation but shall not have any right to vote on any matters submitted to shareholders at such meetings except as otherwise provided in the Act, provided, however, that (i) the holders of the Non-Voting Common Shares shall not have any rights to vote separately as a class with respect to a matter referred to in subsections 176(1)(a), (b), or (e) of the Act and (ii) each holder of Non-Voting Common Shares shall be deemed to have waived any rights of dissent under section 190 of the Act in respect of any matter referred to in subsection 176(1)(a), (b) or (e) of the Act.

**8.4 Conversion:** The Corporation shall have the right, exercisable by the Corporation at any time upon five (5) days' written notice (a "Conversion Notice") to any holder of Non-Voting Common Shares, to convert any or all Non-Voting Common Shares into an equivalent number of fully paid and non-assessable Common Shares, without the payment of any additional consideration by the holder thereof. The foregoing constitutes the only conversion rights or obligations respecting the Non-Voting Common Shares and holders of Non-Voting Common Shares shall have no rights of conversion in respect of Non-Voting Common Shares held by them.

**8.5 Conversion Mechanics:** The mechanics of conversion for the Non-Voting Common Shares shall be as follows:

- (a) subject to paragraph (b) below, to convert Non-Voting Common Shares that are subject to a Conversion Notice into Common Shares, upon receipt of such Conversion Notice the holder of such Non-Voting Common Shares shall first surrender the certificate or certificates for those Non-Voting Common Shares, duly endorsed, at the office of the Corporation or of any transfer agent for such shares;
- (b) the Corporation shall, as soon as practicable after the holder of Non-Voting Common Shares has surrendered the share certificates required by paragraph (a) above, issue and deliver at such office to such holder, a certificate or certificates for the number of Common Shares to which the holder shall be entitled pursuant to Section 8.4 above. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the Non-Voting Common Shares to be converted, and the person or persons entitled to receive the Common Shares issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Shares on such date; and
- (c) if some but not all Non-Voting Common Shares represented by any certificate or certificates surrendered by a holder pursuant to a Conversion Notice are converted, the Corporation shall execute and deliver to the holder a new certificate representing the remaining number of Non-Voting Common Shares, which were not converted.

**9. Residual Rights.**

**9.1** All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the Common Shares.

**SCHEDULE 2**

Shares of the Corporation may not be transferred unless the restrictions on the transfer of securities of the Corporation contained in article 7 of the Articles of the Corporation entitled "Other provisions, if any" are complied with.

### SCHEDULE 3

1. The right to transfer securities, other than non-convertible debt securities, of the Corporation shall be restricted in that no security holder shall be entitled to transfer any security or securities without the approval of the directors of the Corporation expressed by a resolution passed at a meeting of the board of directors or by an instrument or instruments in writing signed by a majority of the directors.
2. In addition to, and without limiting such other powers which the Corporation may by law possess, the directors of the Corporation may, without authorization of the shareholders, for the purpose of securing any bonds, debentures or debenture stock which the Corporation is by law entitled to issue, by authentic deed or otherwise, grant a hypothec or mortgage, including a floating hypothec or mortgage, on a universality of property, moveable or immoveable, present or future, corporeal or incorporeal, of the Corporation, and pledge, cede or transfer any property, moveable or immoveable, present or future, corporeal or incorporeal, of the Corporation.
3. The Corporation has a lien on a share registered in the name of a shareholder or the shareholder's personal representative for a debt of that shareholder to the Corporation.
4. The directors of the Corporation may appoint one or more additional directors, who shall hold office for a term expiring not later than the close of the next annual meeting of shareholders of the Corporation, but the total number of directors so appointed shall not exceed one third of the number of directors elected at the previous annual meeting of shareholders of the Corporation.